

# **CITY OF BELL**

Audit Report

## **ADMINISTRATIVE AND INTERNAL ACCOUNTING CONTROLS**

*July 1, 2008, through June 30, 2010*



**JOHN CHIANG**  
California State Controller

September 2010



**JOHN CHIANG**  
**California State Controller**

September 22, 2010

Pedro Carrillo  
Interim City Administrator  
City of Bell  
6330 Pine Avenue  
Bell, CA 90201

Dear Mr. Carrillo:

Enclosed is the report of the State Controller's Office audit of the City of Bell's administrative and internal accounting controls system. The audit was conducted at your request for an assessment of the adequacy of the city's controls to safeguard public assets and to ensure proper use of public funds.

Our audit found that, because the control deficiencies were so serious and pervasive, the City of Bell's internal control system was virtually non-existent. All of the city's financial activities and transactions evolved around one individual—the former Chief Administrative Officer (CAO)—who for all intents and purposes had complete control and discretion over how city funds were to be used. There is no evidence of any oversight by members of the Bell City Council, most of whom received additional compensation and/or loans as a result of actions authorized by the CAO. Under this environment, the potential for waste, fraud, abuse, and misappropriation of public funds is extremely high.

Based on a review of a very limited sample of transactions, we identified the following conditions that suggest possible intentional abuse and misuse of city funds (Finding 1):

- The Bell City Council approved exorbitant salary and benefits for the former CAO without any accountability for performance. The former CAO continued this process by allowing enormous salaries for other chief administrative staff.
- More than \$93,000 in city funds was used to repay the former CAO's personal loans, apparently without any authorization or justification of public benefit, which constitutes a gift of public funds.
- Approximately \$1.5 million in loans were made to members of the Bell City Council, city officials, and city employees at the sole discretion of the former CAO and without any justification of public benefit, which again constitutes a gift of public funds.

- Payments were made to a contractor, who was also acting as the city's "Director of Planning Services." Payments continued even after the contract had expired in June 1997. The contractor also charged the city a 10% administrative fee (profit) for any subcontractor he hired, which raised questions about conflict-of-interest with his role of the Director of Planning Services. Total payment to two firms owned by the contractor was in excess of \$10.4 million from January 1995 through June 2010. In effect, the Director oversaw many subcontractors of the city, each garnering him a 10% administrative fee (profit).
- The city in May 2009 purchased real property for \$4.8 million from a trust established by a former Bell mayor who paid \$480,000 for it in 1981. There was no documentation available to show what the property was to be used for, how the property was selected, and cost analyses to justify the purchase amount. The store on the acquired site has been vacated and there has not been any activity on this site.

In addition, we found the city mismanaged its voter-approved Measure A bond funds (Finding 2) as follows:

- The city issued \$50 million in general obligation bonds for Measure A without any documented plan and timeframe to utilize the proceeds and apparent need for the funds.
- The 2007 series of bond proceeds of \$35 million had the former CAO assume the role of fiscal agent. As such he had total control and discretion over how bond funds were to be used. As of August 31, 2010, approximately \$11.5 million of the \$35 million had been spent. Given the questionable practices of the former CAO identified in other sections of this report, the risk for improper use of bond funds is very high.
- The amount of 2007 series of bond issuance (\$35 million) was far in excess of the amount that was needed and thus unnecessarily increased the city's costs of borrowing. In addition, the surplus funds inexplicably were deposited in a non-interest-bearing checking account which, assuming an interest factor of 2% per annum, resulted in interest losses of approximately \$1.7 million as of August 31, 2010.
- Rather than depositing increased property tax proceeds in a separate Debt Service Trust Account as specified in the city's paying agent agreement with the U.S. Bank National Association, the funds were deposited in the General Fund, which artificially inflated the General Fund cash balance. Under the former CAO's employment agreement with the city, his salary increases were contingent on a positive cash position in the General Fund. Again, at least in appearance, this practice could be self-serving.

We also found the Bell City Council exceeded its authority in increasing assessments and taxes without voter approval (Finding 3). Specifically, we found that:

- The Bell City Council improperly increased the assessment of the Sanitation and Sewerage System District without voter approval. The estimated amount of overcharge is \$621,737 for FY 2007-08 through FY 2009-10.

- The city improperly used \$1,143,618 in funds from four assessment districts (Sanitation and Sewerage System, Refuse Collection, Recycling and Integrated Waste Management, and Landscape and Lighting) to pay for portions of payments to the former CAO and the Assistant CAO for regular and holiday pay, and pay in lieu of vacation. The California Constitution stipulates that charges against assessment districts must be directly related to services provided to the districts.
- Other unauthorized increases in pension assessment and business license taxes have had the effect of reducing General Fund pension obligations or enhancing General Fund revenues, which in turn provided greater flexibility to increase compensation. At least in appearance, this raised the question of whether the decisions to increase assessments and taxes were motivated by personal gain considerations. The amount of the unallowable pension assessment is \$2,934,144 for FY 2007-08 through FY 2009-10. The estimated overcharge to the business license taxes is \$2,105,441 for calendar years 2000 through 2010.

We recommend the City of Bell takes immediate action to institute a system of business policies, processes and procedures that will provide proper checks and balances over public assets and public funds. The city should take other measures to refund unallowable excess amounts of assessments and taxes collected and, to the extent possible, recoup any inappropriate payments or loans. Furthermore, the Director of Planning Services should be a city employee to avoid conflict of interest and save the city money. In addition, as certain matters disclosed in this report suggest possible intentional misuse of public funds that may involve collusive practices, we will provide copies of this report to all appropriate law enforcement agencies for consideration of additional investigation and possible legal action.

The above findings were discussed with the City of Bell management during an audit exit conference on September 16, 2010. In its response, included as Attachment E of this report, the city did not dispute any of the findings contained in this report but offered legal theories suggesting that at least some of the increases in the Sanitation and Sewerage assessments and business license taxes were justifiable and that these matters require further legal review. These are legal issues that the city ultimately must address with the citizens or the businesses that paid the higher assessments and taxes.

If you have any questions, please contact Jeffrey V. Brownfield, Chief, Division of Audits, at (916) 324-1696.

Sincerely,

Original signed by:

JOHN CHIANG  
California State Controller

cc: The Honorable Edmund G. Brown, California Attorney General  
The Honorable Steve Cooley, Los Angeles County District Attorney  
Andre Birotte Jr., U.S. Attorney, Central District of California



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# Audit Report

## Introduction

The State Controller's Office (SCO) audited the City of Bell's system of administrative and internal accounting controls for the period of July 1, 2008, through June 30, 2010. On July 28, 2010, the newly appointed interim Chief Administrative Officer (CAO) of the City of Bell made a request with the State Controller to perform an audit of the city to address numerous disclosures made in the news media suggesting possible misuse of public funds by senior management staff. In response, the State Controller agreed to perform an audit of the city's system of internal controls, property and business license tax revenues, and state and federal funding.

This report presents the results of findings and conclusions reached in the SCO audit of the city's administrative and internal accounting controls system.

Separate reports will be issued for our audits of the Special Gas Tax Street Improvement Fund, City of Bell's Redevelopment Agency, and other state and federal funding at a later date. In addition, we have issued letters concerning the City of Bell's Pension Assessment Fund (Attachment A), the Sanitation and Sewerage System District Assessment Fund (Attachment B), and the Business License Taxes (Attachment C).

## Background

The City of Bell is located in Los Angeles County, California. The population was 36,664 in the 2000 census; at 2.5 square miles, it is 13th among the 25 geographically smallest cities in the United States with population of at least 25,000.

City residents voted to become a charter city in a special municipal election on November 29, 2005. Fewer than 400 residents, representing approximately 1.1% of the city's total population turned out for the special election. The charter provided more autonomy to city management and exempted the city from needing to follow state contracting procedures or complying with a state law that limits council members' salaries.

The Los Angeles Times was the first to break a story of the City of Bell in July 2010. A series of articles revealed that some City of Bell administrators and council members were receiving disproportionately high salaries.

Many Bell citizens became outraged and called for the suspension of the salaries of these officials and later the resignation of several council and staff members. On July 23, 2010, the administrative officers resigned their positions with the city, while the Mayor and the City Council continued to govern the city.

On July 24, 2010, the City Council hired (contracted) the Chief Executive Officer (CEO) of a consulting firm the city was paying for other services to be the interim CAO of the city.

One of the first actions taken by the newly-appointed interim CAO was to request an audit of the City of Bell. In response to this request, the SCO agreed to perform an audit to assess whether the city has had adequate administrative and internal accounting controls to ensure proper accountability over use of public funds and assets.

## **Objectives, Scope, and Methodology**

The objective of this performance audit was to evaluate the City of Bell's system of administrative and internal accounting controls to ensure:

- Effectiveness and efficiency of operations;
- Reliability of financial reporting;
- Compliance with applicable laws and regulations; and
- Adequate safeguard of public resources.

During our audit, we became aware of poorly designed and ineffective controls. Although the scope of our internal control review was city-wide, our audit focused on areas that we believed to have the greatest risk to city operations. These areas included budgets, payroll, expenditures, contracting, property and business license tax revenues, and the city's general obligation bonds.

To accomplish our audit objective, we performed the following audit procedures:

- Evaluated the city's formal written internal policies and procedures.
- Reviewed the independent auditor's working papers for the audit of the city's financial statements for Fiscal Year (FY) 2007-08 and FY 2008-09.
- Conducted interviews with city employees and observed the city's business operations for the purpose of evaluating city-wide administrative and internal accounting controls.
- Reviewed the city's documentation and supporting financial records.
- On a limited basis, performed test of transactions to ensure adherence with prescribed policies and procedures and to validate and test the effectiveness of controls.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Conclusion

We found the City of Bell's administrative and internal accounting control system to be, in effect, non-existent as all financial activities and transactions evolved around one individual—the former Chief Administrative Officer (CAO)—who apparently had complete control and discretion over how city funds were to be used. Evidence suggests that the former CAO used public funds for personal gains. Members of the City Council, most of whom received additional compensation and/or loans as a result of action authorized by the former CAO, have never questioned or rejected any of the former CAO's requests or proposals. Under this environment, the potential for waste, fraud, abuse, and misappropriation of public funds is extremely high.

We also found the city, under the direction of the former CAO, mismanaged its voter-approved Measure A bond funds, which resulted in its citizens absorbing millions of dollars in unnecessary interest charges or losses in interest income.

In addition, we found the Bell City Council approved increased assessments/taxes without voter approval. A significant portion of the increased assessments/taxes was used to increase the compensation of two of the city's senior management staff members.

## Views of Responsible Officials

The SCO conducted an exit conference on September 16, 2010, at which a draft report dated September 16, 2010, was presented. The auditee was informed that any responses should be made by September 20, 2010, at 5:00 p.m. Pedro Carrillo, Interim Chief Administrative Officer of the City of Bell, e-mailed a response on September 20, 2010, that failed to specifically agree or disagree on Finding 1 and Finding 2, and gave comments to parts of Finding 3 (see Attachment E).

The SCO has made specific comments in regards to the issues commented on by the city (see Attachment F).

## Restricted Use

This report is solely for the information and use of the City of Bell and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

*Original signed by*

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

September 22, 2010

# Findings and Recommendations

## **FINDING 1—**

***The SCO identified significant control deficiencies in virtually every aspect of the city's fiscal functions. Under the current system, the potential for waste, fraud, abuse, and misappropriation of public funds is extremely high.***

The State Controller's Office (SCO) made an assessment of the city's fiscal functions using standards adopted by the American Institute of Certified Public Accountants and the auditing profession that prescribe essential elements for a sound administrative and internal accounting controls system. In general, internal control encompasses a system of checks and balances designed to safeguard the entity's assets and to reduce the possibilities of intentional and/or unintentional errors. Examples of internal control include sound policies and procedures, a system of authorization and approval, clearly defined responsibilities, and separation of duties in relation to operations and custody of assets.

The results of our internal control assessment are presented in a matrix as Appendix 1 of this report. In essence, we found the city's system of internal control to be non-existent as all financial activities and transactions evolved around one individual, the former Chief Administrative Officer (CAO), who had complete control and discretion over how city funds were used. For example, the former CAO could approve any purchase transaction of \$50,000 or less, and transactions of more than \$50,000 were to be reviewed and approved by the members of the Bell City Council, most of whom received additional compensation and/or loans as a result of actions authorized by the former CAO. A review of the Bell City Council meeting minutes found all of the requests were approved by the City Council members with little or no question or deliberation. As disclosed in later parts of this finding, evidence suggests that the former CAO may have used public funds for personal gain. Under an environment of weak controls and questionable ethics, the potential for waste, fraud, abuse, and misappropriation of public funds is extremely high.

As a part of our assessment, we selected a limited number of transactions to validate and test the effectiveness of internal controls. Our review identified a number of instances where questions exist as to whether payments for goods or services were necessary, reasonable, and legal. It is highly probable that the conditions identified in our limited sample are pervasive throughout the city's system. Specifically, we identified the following conditions:

- **The Bell City Council approved raises for the CAO without any accountability for performance. The CAO continued this process by allowing enormous salaries for other top administrative staff.**

Our audit disclosed that the City Council minutes did not contain any detailed discussion or fiscal analysis of the CAO salary increases as the CAO's salary and compensation package continued to grow after his hiring. In 1993, his salary was \$72,000 per year and by the time he resigned in 2010, his employment contract, effective July 1, 2010, had his salary top out at \$787,000 per year. In addition, we could not determine any accountability for his performance. Many of his employment contracts required annual performance evaluations; however, our audit did not disclose any such evaluations.

In addition, our audit disclosed that the CAO authorized disproportionate salary and benefit package increases for top city administrators. The City Charter allows the CAO to appoint, promote, demote, suspend or remove, all department heads, officers and employees, except elected officials and those department heads, officers and employees the power to whose appointment is vested by the City Charter. Our audit did not disclose any annual performance evaluations as required by many of these employment contracts or any detailed discussion or fiscal analysis of compensation increases in the City Council minutes or personnel files.

The result was a significant increase in payroll for top city administrators. By FY 2009-10, the city expended \$2,391,544 in salaries and \$3,385,783 in compensation for six top city administrators, City Council members, and the mayor (see Appendix 2 for a list of staff members and their salary and compensation).

- **Public funds were used to repay the former CAO's personal loans, apparently without authorization.**

For the pay periods ended July 6, 2008, and August 16, 2009, the city's payroll registers indicated that the former CAO's earnings included "Miscellaneous" items in the amounts of \$47,563.09 and \$45,877.47, respectively. The same payroll registers also contained "Miscellaneous" deductions for the same amounts. Further inquiry disclosed that the former CAO, on April 2, 2004, borrowed \$50,000 each from his 401(a) and 457 retirement savings accounts at an interest rate of 6.875% and 5.8512%, respectively, per annum. Repayment of both loans commenced on May 2, 2004, and was to end on March 12, 2034.

Upon further review, our audit noted the city repaid the two loans on behalf of the former CAO by wire-transferring \$47,875.59 from its payroll account to the ICMA Retirement Corp. on July 14, 2008, and another \$45,877.47 on August 12, 2009. We reviewed the former CAO's employment contract which did not contain any provision authorizing repayment of his personal loans. The Bell City Council's meeting minutes did not contain any entry suggesting that the City Council authorized the repayments or even knew about them. None of the city's administrative or personnel staff could provide any explanation or documentation as to who authorized the repayments. The rationale and basis for the transactions according to the City Treasurer, "was to pay for the CAO's shortage of contribution to his retirement plans."

The above transactions demonstrate the severity of the internal control deficiencies as transactions of this nature and these amounts could be carried out without full justification and documentation. For instance, for Fiscal Year (FY) 2007-08 through FY 2009-10, total compensation of the former CAO increased significantly, in part through the above transactions and other practices (such as payment-in-lieu of vacation and sick leave and contributions to deferred compensation funds) authorized by the City Council through the CAO's employment contract.

The vacation and sick leave buyback practices were extended to other city officials and employees. For FY 2008-09 and FY 2009-10, the city paid a total of \$529,433 in sick leave buybacks and \$1,245,072.45 in vacation buybacks to its officials and employees. Appendix 2 provides a schedule of the compensation (excluding fringe benefits) of the former CAO, the City Council members, and some senior staff members that included sick leave and vacation buybacks.

- **Loans in the form of advances were made to members of the Bell City Council, city officials, and city employees at the discretion of the former CAO. This constituted a gift of public funds.**

The city made loans to City Council members, senior staff members, and employees totaling approximately \$1.5 million from November 2002 through March 2010. In addition, the city loaned another \$300,000 to a business owner in the city. The employee loan amounts ranged from \$1,000 to \$130,000, with senior management staff members receiving the most significant amounts. Four officials—the Assistant CAO, the Director of Administrative Services, the Director of Community Services, and a Deputy Chief of Police—collectively received more than \$690,000 in loans from the city. In addition, three City Council members each received \$20,000 in loans.

We noted that this practice first began in March 2002 when the city executed an addendum to the employment agreement of the former CAO to provide for a loan of \$80,000 to be repaid through his future vacation and sick leave earnings. The addendum language was used as a model for an “administrative agreement” (see Attachment D for an example) between the city and the employees, requiring repayment within a specified period at an interest rate tied to the Local Agency Investment Fund, which as of September 3, 2010, was 0.531%. Our current audit has identified the following concerns:

- There was no ordinance or written policy authorizing this loan practice or prescribing circumstances under which such loans could be authorized. When interviewed, city officials and employees informed the auditors that the loans were made at the sole discretion of the former CAO. This leads to questions about possible favoritism by the former CAO and conflict-of-interest by those individuals (including members of the City Council) who received the loans.
- These loans had no public benefit. As such, they are a gift of public funds. The California Constitution, Article XVI, section 6, prohibits any public agency from making any gift or loan of public money or thing of value to, among other things, any individual. In determining whether there has been an illegal gift of public funds in violation of the Constitution, the primary question is whether funds are used for a “public purpose.” The loans appear to be made for private, rather than public, purposes, and therefore are a gift of public funds.

- The loan amounts apparently were also determined at the sole discretion of the former CAO in absence of policy or guidelines. When interviewed, some city officials and employees stated that they believed the loans were to be based on the employees' accrued vacation and sick leave balances. However, as part-time elected officials, City Council members do not accrue any vacation or sick leave benefits.
- The "administrative agreements" were in actuality contracts, which, according to the city ordinance, require Bell City Council approval if the amount exceeds \$50,000. There is no evidence that the City Council approved any of the loans.
- A \$300,000 loan to a business entity in the city apparently was made without any knowledge or consent of the City Council. The loan currently is in default, which raises questions as to whether it constitutes gift of public funds.
- **Payments were made to a contractor, who was also acting as the city's Director of Planning Services. Payments continued even after the contract had expired in June 1997.**

In April 1995, the city contracted with D & J Engineering to "provide engineering services for the development of the plans and specifications for the Curb, Gutter and Sidewalk Improvement Project." The owner of the engineering firm was listed in the city's latest five-year budget plan as the "Director of Planning Services." This individual is not on the city's payroll but has been paid a monthly retainer to perform this role through the contract with the city. In addition, this individual also owns TD Urban Planners which also had a contract with the city.

Under the contract, D & J Engineering was to be paid for the following services:

- Cost of services on a time-and-materials basis not exceeding \$24,500 without prior authorization.
- Direct out-of-pocket expenses as included in the bid proposal based on hourly rates that range from \$35 to \$105 per hour. In addition, the contractor was to be reimbursed at cost plus 10% overhead of prints, research material, and other incidental expenses. It is our understanding D & J Engineering in reality used this 10% above the invoice amount to pay for a subcontractor retained by the firm to work on city projects.

According to its payment history, the city paid D & J Engineering a total of \$10,002,902.97 from January 3, 1995, through June 29, 2010. In addition, the city paid \$430,605.82 to TD Urban Planners from December 5, 2006, through June 28, 2010.



Our audit identified the following concerns:

- The most current D & J Engineering contract on file with the city expired on June 30, 1997. City officials told the auditors they were not aware of any contract extensions or amendments beyond that date. We also inquired with the Director of Planning Services who stated that he was unaware that the contract had expired and that he would see if he has a current contract. To date, he has yet to provide the auditors with a current contract. Unless a current contract is in effect, the city did not have the legal authority to pay for invoices after the contract had expired. Moreover, the relevance and necessity of the scope of work identified in a contract executed more than ten years ago is highly questionable.
- All of the D & J Engineering's invoices we reviewed show they were either approved by the former CAO or by the Assistant CAO on behalf of the former CAO. The invoices do not appear to contain sufficient details for meaningful reviews. For example, each invoice contained billing of \$10,000 for services to the Planning Department and \$10,000 for the Building and Safety Department without identifying what services had been performed. The more than \$10 million in payments made to firms owned by the Director of Planning Services show a high risk for abuse.
- The City Planner should have been acting as an independent city official in overseeing these contracts. However, because he was actually receiving his pay as part of one of the contracts, his independence was compromised.
- **The City of Bell purchased real property from a trust established by a former Bell mayor for \$4.8 million. However, there was no documentation available to show what the property was to be used for, how the property was selected, and cost analyses to justify the purchase amount.**

In May 2009, the city purchased a property located within the City of Bell for \$4.8 million that was owned by a trust established by a former mayor of the city who purchased it for \$480,000 in 1981. According to the purchase agreement, the Bell City Council, acting as the Bell Community Redevelopment Agency made a \$200,000 down payment and the trust financed the remaining \$4.6 million at an annual interest rate of 6% for 15 years at \$38,817.41 in monthly installment payments.

We have reviewed the project file and found inadequate information or documentation for a transaction of this magnitude. For example, the project file contains no documentation regarding what the property was to be used for, how many properties were considered, and how this particular property was selected. The project file includes only one appraisal report. That report shows the property was appraised at \$4.8 million. However, in absence of other cost analyses, the one appraisal report by itself does not appear to be sufficient to justify a transaction of this magnitude.

Most discussions about this purchase occurred during closed sessions of the Bell City Council meeting as the Bell Community Redevelopment Agency. Therefore, we have no basis upon which to assess the necessity or reasonableness of this property acquisition. However, the store on the acquired site has been vacated and there has not been any activity on this site. This matter merits further scrutiny which is beyond the scope of an internal control audit.

**FINDING 2—  
*The city mismanaged its  
voter-approved  
Measure A bond funds,  
which resulted in its  
citizens absorbing  
unnecessary interest  
charges and/or lost  
interest incomes.***

In the November 2003 election, the voters of the City of Bell approved Measure A, authorizing issuance of \$70 million in general obligation bonds. According to the ballot measure, the fund was to be used to “develop the Bell Sports Complex to include a gymnasium for indoor soccer, basketball, cheerleading and the baseball facility; expand the Bell Community center and other parks, recreational and cultural facilities; construct a new full service Bell Community Library, Performing Arts Theatre, public safety and civic facilities.”

To date, the city has issued \$50 million in bonds under Measure A in two series—the first issuance of \$15 million in 2004 and the second bond issuance of \$35 million in 2007. Approximately \$27 million of the bond proceeds had been spent as of August 31, 2010, and approximately \$23.5 million is currently on deposit in a non-interest bearing commercial checking account at Wells Fargo Bank. In addition, approximately \$5.0 million of the \$27 million was used to pay interest on the bonds. Appendix 3 provides a schedule of expenditures incurred as of August 31, 2010, on the various projects. Our review of controls and transactions related to Measure A funds identified the following concerns:

- For the first issuance, the bond proceeds were deposited in an outside account maintained with Citigroup. Thus, expenditures were—at least on a cursory level—subjected to an outside review before they were reimbursed. However, the CAO assumed the role of fiscal agent for the second issuance of \$35 million. The removal of the outside account provided the former CAO with total discretion over how bond funds were to be used. The Director of Administrative Services authorized purchase requisitions for reimbursement of project expenditures from Measure A funds. When questioned, the Director of Administrative Services told the auditors that she had a limited role with bond expenditures as the former CAO “controlled everything.”
- We could not find any plans or documentation identifying what projects were to be funded through Measure A funds, the budget for each project, milestones and timeframes for completion, and periodic assessments of the status of the projects. The election authorizing the bond measure was held in November 2003. However, our review of the City Council meeting minutes noted that the first time the possibility of putting this measure before the public was not discussed until a meeting in June 2003. As a result, there has been little discussion or deliberation of project priorities before or after the election, and funding decisions essentially were deferred to the former CAO who also acted as the fiscal agent for the second issuance of \$35 million in 2007.
- The city did not establish separate accounts in accordance with its paying agent agreement with the U.S. Bank National Association, which maintains trust accounts on behalf of the bondholders. The paying agent agreement specifically requires a Debt Service Account held in trust solely for payment of principal and interest on bonds. The city did not increase property taxes to pay for bond indebtedness until FY 2009-10, but the increased property tax proceeds were deposited in the General Fund instead of a Debt Service Fund, which

inflated the General Fund cash balance. Under the former CAO's employment agreement with the city, his salary increases were contingent on positive cash position in the city's General Fund.

- We could not find the rationale why the city issued a second bond issuance of \$35 million. The total proceeds were deposited in August 2007 in the Wells Fargo checking account. That account still had a cash balance of approximately \$23.5 million as of August 31, 2010. Of the \$11.5 million expended for the 2007 issuance, approximately \$5 million was spent on bond interest, with only \$6.5 million spent on projects. The issuance of bonds exceeding the amount actually needed resulted in the citizens of the city incurring unnecessary interest expenses at approximately 5% annually. The city could have mitigated the interest expenses to some extent by depositing the funds in an interest-bearing account, which is a customary practice for handling bond proceeds. Inexplicably, the \$35 million was deposited in a non-interest-bearing account which resulted in losses of interest income. Assuming an interest factor of 2% per annum, the interest losses would be approximately \$1.7 million as of August 31, 2010.
- There appears to be little activity on the Bell Sports Complex which, according to various city officials, was the primary thrust of Measure A. In six years, it is unclear what has been accomplished except for acquiring a site that consists of a dirt lot with a masonry wall around it and a water pumping station in the middle. We did not find any documentation regarding plans for completion of this project.

**FINDING 3—**

***The city engaged in questionable practices of raising assessments/taxes without voter approval; a significant portion of the increased assessments were used to increase compensation for two of the city's senior management staff members.***

The SCO found that the Bell City Council exceeded its legal authority in increasing the direct assessment for the Sanitation and Sewerage System District without obtaining voter approval. A portion of the assessments, along with proceeds from other increases in assessments that the Bell City Council has the legal authority to impose, was used to significantly increase the compensation of the former CAO and the Assistant CAO.

In 2007, the Bell City Council adopted a series of resolutions that, in total, nearly doubled the assessments for the Sanitation and Sewerage System District, the Refuse Collection District, the Recycling and Integrated Waste Management District, and the Landscape and Lighting District starting in Fiscal Year (FY) 2007-08. The increase in rates cumulatively resulted in approximately \$4,742,340—from a total of \$4,957,805 to a total of \$9,700,145—in additional assessments for the four districts for FY 2007-08 through FY 2009-10. These increases coincided with significant increases in the compensation of the former CAO and the Assistant CAO who, collectively, over the same three-year period, received additional compensation totaling \$1,143,618 from the accounts of the four districts. In essence, the city used approximately 24% of the increased assessment funded by the ratepayers for sanitation, refuse, recycling, and lighting services to enhance the compensation of the former CAO and the Assistant CAO. The SCO audit identified the following concerns:

- **The Bell City Council had no legal authority to increase the assessment of the Sanitation and Sewerage System District without voter approval.**

At the request of the auditors, the SCO Legal Office reviewed the resolutions that authorized the increases and opined that the Bell City Council had legal authority to increase the assessment rates for the Refuse Collection District, the Recycling and Integrated Waste Management District, and the Landscape and Lighting District. However, the SCO Legal Counsel concluded that the increase in assessment of the Sanitation and Sewerage System District, referred to in the original authorizing resolution as a “standby” charge, is in violation of the California Constitution, Article XIII D, section 6, subsection (b)(4). That provision stipulates that sewer “standby” charges, be classified as assessments and shall not be imposed without complying with the California Constitution, Article XIII D, section 4, which requires a vote of the property owners who would be affected by the assessment. The estimated amount of charges related to the Sanitation and Sewerage System increase for FY 2007-08 through FY 2009-10 is \$621,737.

In a letter dated September 9, 2010, a law firm representing the city disagreed with our conclusion that the increase was for sewer standby charges and thus required voter approval. Through its legal representative, the city asserted that the amount imposed is a “new” sewer fee that did not require voter approval. We reviewed the rationale and basis for this assertion and find it to be non-persuasive. Thus, our finding remains unchanged. The legal representative’s letter and our response is included as Attachment A.

- **The total of \$1,143,618 used to fund portions of payments to the former CAO and the Assistant CAO for regular and holiday pay, and pay in lieu of vacation was inappropriately charged against four districts for FY 2007-08 through FY 2009-10.**

In general, compensation for the former CAO and the Assistant CAO's are costs of carrying out the operations of the city government and thus are to be charged against the city's General Fund. The California Constitution, Article XIII D, section 4(a), provides, "An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit upon them and upon which an assessment will be imposed. . . ." The California Constitution, Article XIII D, section 6(b)(4), provides, "No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question." Thus, these charges are inappropriate unless it is clearly demonstrated (and documented) that they are directly related to providing services to the districts funded through assessments. City staff members said that compensation for the former CAO and the Assistant CAO was charged to the districts on a percentage basis. There is apparently no relation to services provided.

- **There may be other questionable charges against the districts funded through direct assessments.**

Given the lack of internal controls noted in previous sections of this audit report, there is a high probability that there may have been other inappropriate charges against the increased assessments. As the scope of the SCO audit focused on the city's internal controls, we did not conduct a detailed examination of the charges against the funds of the districts funded through direct assessments.

In addition to the findings regarding programs funded through direct assessments, the SCO identified questionable practices related to pension assessment and business license taxes where the Bell City Council or city management may have inappropriately increased tax levies. These increases either increased the city's General Fund revenues or reduced the General Fund burden to fund pension obligations, which in turn increased the amount available to fund increase in compensation of the city managers and staff members. Specifically, the audit found:

- *Pension Assessment*

On July 23, 2007, the Bell City Council adopted Resolution No. 2007-42 to increase the tax levy related to the payment of the city's pension obligation, from 0.187554% in FY 2006-07 to 0.237554% in FY 2007-08, 0.257554% in FY 2008-09, and 0.277554% in FY 2009-10—an increase of approximately 48% over a three-year period. The increased rates resulted in \$2,934,144 in additional taxes over a three-year period, and reduced the city's General Fund burden to fund pension obligations by the same amount.

The SCO found the increased tax levy to be unallowable under Revenue and Taxation Code section 96.31(b). Under this section, the City of Bell had no authority to levy a property tax rate greater than the rate imposed in FY 1982-83 or FY 1983-84. Thus, the \$2,934,144 in additional tax levies is unallowable. In a letter dated August 13, 2010, to the Los Angeles County Auditor–Controller, the State Controller identified this issue and requested immediate action to reduce the property tax levy that ultimately was applied toward the city’s pension obligation during FY 2010-11, and to repay the excess amounts collected in accordance with applicable statutory provisions.

○ *Business License Taxes*

The city increased the amount for business license taxes, which includes rental business license taxes, by more than 50% for more than 1,000 business owners in the city since the 2000 calendar year. The increase was made without voter approval. In addition, there is no evidence to suggest that the Bell City Council had approved the increases.

The passage of Proposition 218 in 1996 added Articles XIII C to the California Constitution which specifies, “No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote.” With respect to business licenses, the SCO found that the cities and counties levy business license fees and taxes for different purposes. In general, when a fee is levied for regulatory purposes, voter approval is not required. If the tax is levied for revenue generating purposes, then voter approval is required.

The Bell Municipal Code clearly states that business license taxes are taxes for revenue generating purposes. Bell Municipal Code section 5.04.020 states, “The purpose of the provisions of this division is to prescribe a schedule of business license taxes, **for revenue purposes only** [emphasis added], for all businesses located within the city, in the amounts and manner as set forth hereinafter.”

In addition, revenue collected from business license taxes is deposited in the city’s General Fund and are available at the discretion of the city’s management, subject to the approval of the City Council, to fund any operation or activity within the city government. Therefore, we believe the increases were general tax increases and subject to voter approval.

In addition, we found the city’s method of calculating increases to be in conflict with Bell Municipal Code section 5.08.030 which states:

No cost of living increase or decrease, in any calendar year, shall exceed the principal amount of the business license tax imposed during the preceding calendar year, by more than five percent.

The city increased the business license tax by approximately 20% for the 2000 calendar year and by approximately 19% for the 2005 calendar year. The justification was that the city did not impose cost of living increases in prior years and thus it was applying the increases retroactively. The municipal code section cited above contains no provision to allow the city to apply cost of living increases retroactively.

It is not possible to quantify the specific amount of additional business license taxes collected as a result of the increase imposed without voter approval because more than 1,000 businesses, with varying rates, are involved. However, based on annual collection figures, we estimate the total to be more than \$2.1 million for calendar years 2000 to 2010.



**RECOMMENDATIONS**

The SCO recommends that the City of Bell take the following actions:

1. Retain the services of an outside firm to develop new business policies, processes, and procedures as well as institute sound administrative and accounting internal controls. The current system does not have the capacity to implement needed changes with the current management structure and staff. To ensure independence, selection of the outside firm should be made using a sound request-for-proposal system and final selection should be made openly and competitively with citizen participation.
2. As an alternative to the above recommendation, the city should contact the League of California Cities and seek assistance to install a new internal control system from a panel of its peers.
3. Assess the status of the current projects funded through Measure A bond funds and develop a plan for completion that includes budgets, milestones, status, and completion date. Prior to adoption, the plan should be present to the City Council in open sessions and public input should be carefully considered. Once the plan is adopted, monthly updates of the status of implementation and costs incurred on the projects should be made to the City Council in open sessions. The services of outside contractors needed to complete the projects should be acquired through open, competitive bids.
4. Immediately refund the unallowable excess amounts of taxes (pension levy and business license) collected.
5. Immediately refund or offset future Sanitation and Sewerage System District assessments that were collected without voter approval.
6. Comply with its paying agent agreement with the U.S. Bank National Association by establishing separate trust accounts for Measure A funding in accordance with the provisions of the agreement.
7. Reverse the salary charges that were incorrectly charged to four districts and allocate the amounts to the appropriate funds.
8. Seek repayment as soon as legally possible on all outstanding "administrative agreement" loans as well as the \$300,000 business loan.
9. Make the Director of Planning Services a city employee to avoid conflicts of interest and save the city money.

In addition, as certain matters disclosed in this report suggest possible intentional misuse of public funds that may involve collusive practices, the Controller's Office is providing copies of this report to the appropriate law enforcement agencies for consideration of additional investigation and possible legal action.

## Appendix 1— Evaluation of Elements of Internal Control

		Yes	No	Comments
<b>Management Oversight &amp; Control (Control Environment)</b>				
<b>A1.</b>	<b>Integrity and Ethical Values</b>			
	a. Are code of conduct and other policies regarding acceptable business practices, conflicts of interest, or expected standards to ethical and moral behavior in existence and communicated to all city management and employees?		✓	<p>Non-existent and it appears that lack of communication exists. Events or transactions that occurred are as follows:</p> <ul style="list-style-type: none"> <li>Salaries of the City Council and management are disproportionate when compared with salaries in other cities. We noted that the average annual salary of 4 of 5 City Council members was \$97,372, while annual salaries of City Council members around the Los Angeles area average \$13,977. In addition, the City of Bell's Chief Administrative Officer's (CAO) annual salary was \$666,733 and the Assistant CAO's was \$325,180. The average salaries for the same position around the Los Angeles area are \$209,050, and \$165,277, respectively.</li> <li>Contracts for several vendors were missing or non-existent. For Fiscal Year (FY) 2008-09 and FY 2009-10, \$841,766 and \$110,000 were paid to D &amp; J Engineering and to Urban &amp; Associates, Inc. The contract agreement between the city and D &amp; J Engineering expired in June 30, 1996. The folder file for Urban &amp; Associates did not contain any contract agreement.</li> <li>Some purchases of capital assets are questionable. For example, the city purchased properties from the Pete Werrlein Children's Private Annuity Trust for \$4.8 million. From the file that was provided to us, we cannot determine what business benefit will be gained by the city in purchasing these properties.</li> <li>City Council members did not perform adequate review relating to budgets, purchases approval, and employee salaries and advancements. <ol style="list-style-type: none"> <li>The City Council approved the Program of Service/Budget for the Fiscal Years Commencing July 1, 2008 and Ending June 30, 2011 (a revision to the five-year budget 2005-10). However, from our inquiry, a copy of this program service budget was not provided to the City Council until three days before the City Council meeting. Normally, the City Council will review the budget revenue estimates five months before the beginning of the fiscal year.</li> <li>The City Council was to conduct an evaluation of the performance of the CAO. There were no evaluation reports found in the CAO's personnel record.</li> </ol> </li> <li>The city made payments on personal loans. The CAO obtained personal loans (total amount of \$100,000) from his deferred compensation plans (457 and 4019(a)). We noted that these personal loans were paid by the city.</li> <li>The city had unacceptable loan arrangements for several city employees. Several city officials and employees obtained a personal loan from the city and these loans were paid with accrued sick leave and vacation.</li> </ul>

## Appendix 1 (continued)

		Yes	No	Comments
	b. Is reasonable management attitude “Tone at the Top” established by management and communicated to city management and staff?		✓	The former CAO had too much autonomy and no one questioned his decisions or processes to be implemented. The CAO appoints, and may promote, demote, suspend or remove, all department heads, officers, and employees of the city except elected officers and those department heads appointed by the City Council. In addition, the CAO approved purchases ranging from \$50 to \$50,000. The CAO had two personal loans of less than \$50,000 each that were paid by the city.
	c. Is everyday dealing with vendors, clients, auditors and other parties based on honesty and fairness?		✓	Several vendors and service providers who were receiving payments from the city did not have contracts, or contracts are missing or expired. For FY 2008-09 and FY 2009-10, D & J Engineering was paid a total of \$841,766 without a current contract and Urban & Associates, Inc. was paid \$110,000 without a contract included in its vendor file.
	d. Is appropriate remedial action taken in response to non-compliance?		✓	Per our inquiry, there were no established procedures to address non-compliance. The city staff relied on the CAO on what action(s) to do regarding non-compliance.
	e. Is management intervention in overriding established controls documented?		✓	None noted.
A2.	<b>Commitment to Competence</b>			
	a. Is management analyzing tasks relative to a particular job regarding need and extent of supervision?		✓	The city does not have full staffing to perform its daily operations. The CAO, Assistant CAO, and the Director of Community and Social Services resigned from their respective positions. In addition, other city staff members were assigned to the City of Maywood to perform accounting and other administrative services for that city.
	b. Is management evaluating and determining the knowledge and skills needed to perform jobs and the employees have the required knowledge and skill to perform assigned tasks?		✓	No management evaluation noted regarding employees competence during our review of personnel records. In addition, City Council is supposed evaluate the CAO’s performance as condition for his salary increases but there were no evaluation reports found in the CAO’s personnel file.
A3.	<b>Management and Operating Style</b>			
	a. Is management conservative in accepting risks, moves carefully, and proceeds only after careful evaluation?		✓	No. City management made various decisions that appear to be unreasonable. For example, there was an issuance of a lease revenue bond where the city is in danger of defaulting; purchase of city lots from a former mayor does not make good business sense; and increases of property taxes over the limit established by the regulation.
	b. Is personnel turn-over in key functions at an acceptable level and not excessive?		✓	See A2a above.

## Appendix 1 (continued)

		Yes	No	Comments
	c. Is management's attitude positive towards internal control and audit function?		✓	The city management has given consideration to the adequacy of internal control (as stated in its Procedures Manual); however, adequate separation of duties is lacking due inadequate staffing, there were improper authorization of transactions and activities (see A1a above), and documents and records are inadequate to provide reasonable assurance (see A1c). The city does not have an internal audit unit and no internal auditor. The city contracted with an independent CPA firm to complete its annual financial statements.
	d. Are there frequent interactions of senior management and operation management in both formal and informal settings?		✓	Per our inquiry, the Director of Administrative Services stated that there were no set formal or informal meetings between the CAO and other city management personnel.
	e. Is management's attitude appropriate towards financial reporting and other operational reporting?		✓	There were errors noted in the CAO's direct labor distribution report. This is the same with other high management personnel of the city. The CAO allocated direct labor salaries to different fund accounts (e.g., 35% to the General Fund). However, there was no vacation and sick leave pay allocated to the General Fund for the same pay period.
<b>A4.</b>	<b>Organizational Structure</b>			
	a. Is the organization structure centralized or decentralized to facilitate flow of information?		✓	The organization structure is centralized; however, there were no procedures established on how information was disseminated to the staff and the City Council. From our observations, letters, e-mail and direct oral communication were the medium of communication.
	b. Are key managers' responsibilities adequately defined and communicated?		✓	Key managers' responsibilities were defined; however, incompatible functions were performed by these managers due to inadequate staffing. Most of the time, daily operation functions were performed by "whoever is available."
	c. Do managers in charge have the required knowledge, experience, and training?		✓	Some of the managers that we have inquired with appear to have the required knowledge to perform their primary responsibilities; however, these managers will follow orders and instructions from the CAO without question. For example, the payments of the CAO's personal loans were never questioned.
	d. Does the city's established reporting relationship ensure effective communication between employees, supervisors, managers, and officers?		✓	To a limited extent. There is a serious crossover of employees performing different functions due to inadequate staffing. For example, if the accounts payable clerk is absent from work, whoever is available from the staff will perform her work. It appears from our observation, that almost all of the management and employees of the administrative services receive cash payments from the public.
<b>A5.</b>	<b>Assignment of Authority and Responsibility</b>			
	a. Is proper information considered in determining the level of authority and scope of responsibility to an employee?	✓		Proper information was considered in determining level of authority and scope of responsibility; however, the CAO had the ability to do whatever he wanted. For example, a document needed for the CAO personal loan application was signed by the Assistant CAO. This document should have been approved by a higher authority.

## Appendix 1 (continued)

		Yes	No	Comments
	b. Are responsibilities for decisions related to assignment of authority and responsibility?		✓	Based upon our inquiry, most of the decisions are referred to the CAO. For example, significant revision of revenue items that were included in the budget was up to the CAO. Additional engineering services between D & J Engineering were discussed with the CAO.
	c. Are employees at the right level empowered to correct problems or implement improvements?		✓	Yes, but only to a certain extent. Processing of payroll and correction of errors were made by either the treasurer or the accounting manager. Most city staff members follow orders and instructions from the CAO.
	d. Do job descriptions exist and contain specific references to control-related responsibilities?	✓		Job descriptions exist and contain specific references to control-related responsibilities; however, staff members perform incompatible duties due to inadequate staffing.
<b>A6.</b>	<b>Human Resources Policies and Practices</b>			
	a. Are policies and procedures established for hiring, training, and promoting employees and management particularly in hiring and training?		✓	The CAO is responsible for hiring, firing, and promoting city staff (see A1b. above).
	b. Are employees made aware of their responsibilities and expectations of them?	✓		Employees are made aware of their responsibilities and expectations of them during the hiring process. There was no follow-up after an employee is hired. There were no evaluation report noted in the personnel file that we reviewed.
	c. Is management's response to failure to carry out assigned responsibilities appropriate?		✓	This is the sole responsibility of the CAO. There was no documentation questioning the CAO's decisions.
<b>Risk Analysis</b>				
<b>B1.</b>	<b>Goals and Objectives</b>			
	a. Are there entity-wide objectives that were established by management?	✓		Goals were established by management within the administrative services unit but not city-wide objectives. The City of Bell's procedures manual that was provided to the auditors was only for the administrative services unit.
	b. Does information relating to objectives disseminated to all city employees?		✓	There was no documented procedural process of relaying information among city staff except that employees are notified either by co-workers or their superiors about new information.
	c. Are goals (with specific targets and deadlines) established and relate to objectives?		✓	No. Staff's goals are limited to their roles and responsibilities in performing their assigned tasks. The staff's attitude is that the goals and objectives are up to management, mostly to the CAO.
	d. Are measurement data included in the objectives?		✓	We were not able to obtain any measurement data.
	e. Are plans reviewed annually to ensure consistency (strategic plans, bus plans, budget, etc)?		✓	We were not able to obtain any annual reviews.
	f. Are managers involved in establishing objectives for which they are responsible?		✓	It appears that managers are isolated to their departmental goals and objectives.

## Appendix 1 (continued)

		Yes	No	Comments
<b>B2.</b>	<b>Risk</b>			
	a. Does the risk-assessment process in place consider the extent and internal factors affecting objectives?		✓	There was no documented assessment process relative to risk. The Risk Assessment Officer (Assistant Chief Administrator) no longer works for the city. The Director of Administrative Services temporarily took over this position.
	b. Does the risk assessment process include estimated significance of risks, assessing likelihood of occurrence, and determining the needed actions to prevent risks?		✓	Staff members were neither concerned nor did they have a clear understanding at the relevance of risk assessment. We were not able to obtain any documentation in support of a risk assessment.
	c. Is management considering the risks related to Human Resources, budgeting, labor relations, and Information Systems?		✓	There was no documentation, and both staff members and management stated that they were not involved in risk assessment.
<b>B3.</b>	<b>Managing Change</b>			
	a. Are there mechanisms in place to anticipate, identify, and react to routine events or acts that affect achievement of objectives?		✓	There was no documentation—written or verbal—relative to addressing routine events or acts that may affect objectives.
	b. Are there mechanisms in place to identify and react to changes that can have dramatic and pervasive effect on the City?		✓	No. The CAO will address all changes and will make recommendations to the City Council for approval.
<b>Control Activities</b>				
<b>C1.</b>	<b>Management Reviews</b>			
	a. Controls are performed and checked for reasonableness, allowability and validity of transactions?		✓	It appears that some controls are performed and checked for reasonableness, allowability, and validity of transactions; however, there were unreasonable and unallowable transactions that were processed. For example, personal loans by the CAO were paid through the city's accounting system.
	b. Are controlled items counted check periodically?		✓	Records were kept for some controlled items; however, these records were incomplete.
	c. Does management compare different sets of data and investigate variances?	✓		Yes, variances relating to staff payroll records were investigated and corrected. We did not note if management performs these comparisons on other areas of the accounting transaction cycles.
	d. Are duties properly segregated?		✓	See A2b above.
	e. Are administrative and operation policies in writing, current, and do they set clear procedures for compliance?	✓		The City of Bell has a procedures manual. This manual was last updated in August 2007.

## Appendix 1 (continued)

		Yes	No	Comments
<b>Information and Communication</b>				
<b>D1.</b>	<b>Information</b>			
	a. Are mechanisms in place to obtain relevant information on program, legislative or regulatory developments, budget, or economic changes?		✓	Information relative to some programs and budgets were not available and information regarding legislative or regulatory development or economic changes is not in place to readily access information. There was no staff or management assigned to perform such functions.
	b. Have long range information technology plans been developed and linked with strategic initiatives?		✓	None noted.
<b>D2.</b>	<b>Communications</b>			
	a. Are communication vehicles sufficient in effecting communications?	✓		E-mails and updates from co-workers and supervisors.
	b. Do employees know the objectives of their own activity and how their duties contribute to achieving objectives and others goals? From our inquiries, staff knew of their specific job objectives but not how they contributed to other staff's objectives and goals.	✓		Employees know the objectives of their own activity, but not how their duties contribute to achieving objectives and others goals. From our inquiries, staff knew of their specific job objectives but not how they contributed to other staff's objectives and goals.
	c. Are communications channeled to people to report suspected act, permits anonymity, and feedbacks are provided?		✓	We were not able to obtain any documentation.
	d. Does adequate communication exist across the organization? Is information complete, timely, and sufficient?		✓	We were unable to document communication flowing from management to staff and staff to management.
	e. Are feedback mechanism for external parties (suggestions, input, complaints) directed to relevant internal parties?		✓	From our observation and inquiry, all complaints and suggestions were taken at the office counter.
	f. Are staff and other personnel receptive to report problems from external parties?	✓		Staff members at the office counter will address problems from external parties and will get supervisors involved if needed.
	g. Is top management aware of the nature and volume of complaints?		✓	Complaint log is not maintained.
<b>Monitoring</b>				
<b>E1.</b>	<b>Ongoing Monitoring</b>			
	a. Are operational information integrated or reconciled with data generated by the administrative services?	✓		Information is included in the city's procedures manual.
	b. Are operation personnel required to "sign off" on the accuracy of their unit's records?		✓	Staff will perform their assigned tasks but confirmation on the accuracy of their work is not a procedure that is in place.

## Appendix 1 (continued)

		Yes	No	Comments
	c. Are communications from outside parties and monthly statements of accounts payable used as control monitoring technique?		✓	From our inquiry, the accounts payable clerk or her supervisor does not use inquiry and questions of external parties for monitoring technique.
	d. Are periodic comparisons of amounts recorded by accounting system compared with physical assets?	✓		Records were kept for some physical assets; however, these records were incomplete and not reconciled to physical assets.
	e. Does City management have proper authority to decide which of the auditors' recommendations are to be implemented?			N/A. The city does not have an internal audit unit. Recommendations from external CPA were addressed by the CAO.
	f. Are employees' suggestions communicated and acted on as appropriate?		✓	From our inquiry, there were no formal processes of addressing employee or external parties' suggestions.
	g. Does a policy exist to adopt an Incompatible Activities Statement of Conduct?	✓		This is stated in the City of Bell procedural manual. However, the city was inadequately staffed to perform in incompatible duties.
<b>E2.</b>	<b>Separate Evaluation</b>			
	a. Do employees with appropriate skills evaluate portions of the internal control?		✓	From our inquiry and observation, the staff and management did not evaluate internal controls.
	b. Do city staff members gain sufficient understanding of internal controls?		✓	No internal control reviews employed by the city with the exception of the annual financial audits.
	c. Are policy manuals, organization charts, and operational instructions available for review?	✓		Only the City Bell procedures manual, City Charter Provision, and City Ordinance.
<b>E3.</b>	<b>Reporting Deficiencies</b>			
	a. Are means of obtaining reports of deficiencies from both internal and external sources exist?		✓	Report of deficiencies is not maintained.
	b. Is there ongoing monitoring of internal controls?		✓	Although procedures for monitoring internal control is stated in the procedures manual, from our observation and inquiry, monitoring of internal control has not been performed by city staff.
	c. Are deficiencies directly reported to the person directly responsible for the act and to a person at least one level higher?			N/A, see comment above, E3b.
	d. Are the transactions or event identified investigated, causes determined, and problem corrected? We were not able to obtain any measurement data.?			N/A, see comment above, E3b.



## Appendix 2— Summary of Annual Compensation For Selected City Officers For the Fiscal Years 2008-09 and 2009-10

	Fiscal Year		
	2008-09	2009-10	Total
Mayor:			
Community Redevelopment Agency–Regular Salary	\$ 722.71	\$ 722.71	\$ 1,445.42
Life Insurance	396.00	396.00	792.00
Deferred Compensation		16,500.00	16,500.00
Regular Salary	73,665.42	77,019.36	150,684.78
Retro Pay–Regular Salary		826.95	826.95
Regular Salary–Surplus Prop. Auth.	17,964.63	18,803.06	36,767.69
Total	\$ 92,748.76	\$ 114,268.08	\$ 207,016.84
City Council Member A:			
Community Redevelopment Agency–Regular Salary	\$ 722.71	\$ 722.71	\$ 1,445.42
Life Insurance	258.00	258.00	516.00
Deferred Compensation	—	16,500.00	16,500.00
Regular Salary	73,665.42	77,019.36	150,684.78
Retro Pay–Regular Salary	—	826.95	826.95
Regular Salary - Surplus Prop. Auth.	—	18,803.06	18,803.06
Total	\$ 74,646.13	\$ 114,130.08	\$ 188,776.21
City Council Member B:			
Community Redevelopment Agency–Regular Salary	\$ 647.95	\$ 722.71	\$ 1,370.66
Life Insurance	258.00	396.00	654.00
Deferred Compensation	—	16,500.00	16,500.00
Regular Salary	73,665.42	77,019.36	150,684.78
Retro Pay–Regular Salary		826.95	826.95
Regular Salary - Surplus Prop. Auth.	17,964.63	18,803.06	36,767.69
Total	\$ 92,536.00	\$ 114,268.08	\$ 206,804.08
City Council Member C:			
Community Redevelopment Agency–Regular Salary	\$ 545.49	\$ 722.71	\$ 1,268.20
Life Insurance	11.50	90.00	101.50
Deferred Compensation		16,500.00	16,500.00
Regular Salary	55,601.87	77,019.36	132,621.23
Retro Pay - regular salary		826.95	826.95
Regular Salary– Surplus Prop. Auth.	13,559.51	18,803.06	32,362.57
Total	\$ 69,718.37	\$ 113,962.08	\$ 183,680.45
City Council Member D <sup>1</sup> :			
Community Redevelopment Agency–Regular Salary	\$ —	\$ 520.57	\$ 520.57
Life Insurance	—	46.00	46.00
Deferred Compensation	—	—	—
Regular Salary	—	4,515.56	4,515.56
Retro Pay–Regular Salary	—	—	—
Regular Salary–Surplus Prop. Auth.	—	803.51	803.51
Total	\$ —	\$ 5,885.64	\$ 5,885.64

## Appendix 2 (continued)

	Fiscal Year		Total
	2008-09	2009-10	
Chief Administrative Officer <sup>2</sup> :			
401(a)	\$ 48,000.00	\$ 48,000.00	\$ 96,000.00
Auto Allowance	4,320.11	4,818.59	9,138.70
Float Holiday	2,415.00		2,415.00
Holiday	19,205.00	26,758.20	45,963.20
Life Insurance	138.00	258.00	396.00
Miscellaneous	47,563.09	45,877.47	93,440.56
OT–Deferred Comp 457	22,000.00	22,000.00	44,000.00
Regular Pay <sup>2</sup>	538,430.00	666,733.20	1,205,163.20
Retroactive Pay		12,461.40	
Sick Paid	80,059.41	96,057.52	176,116.93
Vacation Paid	237,994.30	286,518.75	524,513.05
Regular Salary–Surplus Prop. Auth.	—	—	—
Total	<u>\$ 1,001,124.91</u>	<u>\$ 1,210,483.13</u>	<u>\$ 2,210,608.04</u>
Assistant Chief Administrative Officer:			
401(a)	\$ 48,000.00	\$ 48,000.00	\$ 96,000.00
Float Holiday	1,177.85	—	1,177.85
Holiday	11,582.19	13,050.56	24,632.75
Life Insurance	138.00	138.00	276.00
Miscellaneous	1,000.00	1,000.00	2,000.00
Regular Pay	286,020.73	325,180.34	611,201.07
Retroactive Pay		6,077.69	
Sick Paid	41,010.00	46,524.91	87,534.91
Vacation Paid	122,023.88	138,231.65	260,255.53
Regular Salary–Surplus Prop. Auth.	—	—	—
Total	<u>\$ 510,952.65</u>	<u>\$ 578,203.15</u>	<u>\$ 1,089,155.80</u>
Director of Administrative Services:			
401(a)	\$ —	\$ —	\$ —
Float Holiday	3,273.08	—	3,273.08
Holiday	7,005.38	8,795.84	15,801.22
Life Insurance	60.00	60.00	120.00
OT–Deferred Comp 457	16,500.00	16,500.00	
Regular Pay	188,804.77	219,165.13	407,969.90
Retroactive pay	—	4,096.22	
Sick Paid	1,190.77	6,570.48	7,761.25
Vacation	793.85	—	—
Vacation Paid	27,487.11	17,506.56	44,993.67
Regular Salary–Surplus Prop. Auth.	—	—	—
Total	<u>\$ 245,114.96</u>	<u>\$ 272,694.23</u>	<u>\$ 517,809.19</u>
Director of Community Services and Social Services:			
401(a)			
Float Holiday			
Holiday	\$ 6,161.54	\$ 6,161.52	\$ 12,323.06
Life Insurance	138.00	138.00	276.00
OT–Deferred Comp 457	4,000.11	4,207.65	—
Regular Pay	154,038.53	154,670.56	308,709.09
Vacation	616.15	—	—
Vacation Paid	19,704.62	19,723.10	39,427.72
Regular Salary–Surplus Prop. Auth.	—	—	—
Total	<u>\$ 184,658.95</u>	<u>\$ 184,900.83</u>	<u>\$ 369,559.78</u>

## Appendix 2 (continued)

	Fiscal Year		Total
	2008-09	2009-10	
Director of General Services:			
401(a)	\$ —	\$ —	\$ —
Float Holiday	3,969.23		3,969.23
Holiday	7,895.40	8,795.83	16,691.23
Life Insurance	60.00	60.00	120.00
OT-Deferred Comp 457	16,500.00	16,500.00	
Regular Pay	193,434.06	219,165.13	412,599.19
Retroactive pay	—	4,096.22	4,096.22
Total	<u>\$ 221,858.69</u>	<u>\$ 248,617.18</u>	<u>\$ 470,475.87</u>
Chief of Police <sup>3</sup> :			
Holiday		\$ 15,819.30	\$ 15,819.30
Regular Pay		411,301.64	411,301.64
Uniform	—	1,250.00	1,250.00
Total	<u>—</u>	<u>\$ 428,370.94</u>	<u>\$ 428,370.94</u>

<sup>1</sup> Appointed as City Council Member on October 12, 2009.

<sup>2</sup> Regular pay includes compensation for performing duties as the City's CAO as well as the Executive Director of the following authorities effective September 1, 2008: Bell Surplus Property, Bell Solid Waste and Recycling, Bell Community Housing, Bell Public Financing, Bell Community Redevelopment.

<sup>3</sup> Employed as Chief of Police on April 28, 2009.

### Appendix 3— Uses of General Obligation Bond—Measure A (2003 Election) Proceeds <sup>1</sup>

Use of Proceeds	2004 Issuance	2007 Issuance	Total
Little Bear Park	\$ 6,199,210.90	\$ 2,487,886.45	\$ 8,687,097.35
Bell Sports Complex	3,100,083.83	3,004,238.86	6,104,322.69
Bond Interest	—	4,987,697.92	4,987,697.92
Deb's Park	1,533,081.78	—	1,533,081.78
Veteran's Clubhouse	1,507,093.52	—	1,507,093.52
Skate Park	1,224,401.09	18,860.00	1,243,261.09
Nueva Vista Park	1,223,209.41	4,550.00	1,227,759.41
Cost of Issuance	255,855.48	162,745.05	418,600.53
Veteran's Park	16,941.14	545,635.69	562,576.83
Civic Center	398,822.16	—	398,822.16
City Hall/Police Department	—	265,257.60	265,257.60
Treder Park	50,371.41	15,297.98	65,669.39
Election Costs	28,701.37	—	28,701.37
Miscellaneous	8,736.46	8,474.55	17,211.01
City Monument	2,877.00	—	2,877.00
Total	<u>\$ 15,549,385.55</u>	<u>\$ 11,500,644.10</u>	<u>\$ 27,050,029.65</u>

<sup>1</sup> The amounts presented on this Appendix are based on city-prepared, unaudited documents.

**Attachment A—  
Controller Chiang's Letter to Wendy Watanabe  
Dated August 13, 2010, Regarding  
Pension Assessment Fund**

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**JOHN CHIANG**  
California State Controller

August 13, 2010

Wendy L. Watanabe  
Auditor – Controller  
County of Los Angeles  
500 West Temple Street, Room 525  
Kenneth Hahn Hall of Administration  
Los Angeles, CA 90012

Dear Ms. Watanabe:

During the course of my audit of the financial affairs of the City of Bell, my auditors have discovered an issue that requires immediate attention.

It appears that on July 23, 2007, the City Council of Bell passed Resolution No. 2007-42 (copy attached) to increase the level of tax being assessed to pay the City of Bell's pension obligations from .187554% to the following:

For 2007-08 - .237554%  
For 2008-09 - .257554%  
For 2009-10 - .277554%

These increased rates were assessed by your office during the years cited. However, we have determined that the tax levies approved by the City Council of Bell through Resolution No. 2007-42 are unallowable under Revenue and Taxation Code section 93.31(b). Under this section, the City of Bell has no authority to levy a property tax rate greater than the rate imposed in the Fiscal Year 1982-83 or Fiscal Year 1983-84. The estimate of the unallowable taxes assessed during the fiscal years of 2007-08, 2008-09 or 2009-10 is \$2.9 million (see attached). \_\_\_\_\_

Additionally, under Revenue and Tax Code section 96.31(d), the County Auditor of Los Angeles is required to reduce the City of Bell's tax levy for pension obligations to the amount allowable - .187554%. The law also requires that the overpayment of unallowable taxes collected must be allocated to elementary, high school, and unified school districts within the City of Bell in proportion to the average daily attendance of each district.

Therefore, I request that you review this matter and take immediate actions to ensure that the taxpayers of the City of Bell are not further burdened with what appears to be an improper property assessment.

Wendy L. Watanabe  
August 13, 2010  
Page 2

In order to remedy this situation, the property tax levy for the City of Bell pension obligation during Fiscal Year 2010-11 should be reduced to .187554%. Also, any amounts collected above the allowable rate of .187554 during the three years identified should be calculated and reallocated to the elementary, high school and unified school districts within the City of Bell in accordance with the requirements of Revenue and Tax Code section 96.31(d).

If you have any questions, please contact Jeffrey V. Brownfield, Chief, Division of Audits at (916) 324-1696.

Sincerely,  
Original signed by:

JOHN CHIANG  
California State Controller

cc: Pedro Carrillo, City of Bell Interim City Administrative Officer  
Mark Saladino, Treasurer, Los Angeles County  
Robert Quon, Assessor, Los Angeles County

**Attachment B—  
Jeffrey V. Brownfield's Letter to James M. Casso  
Dated September 14, 2010, Regarding the  
Sanitation and Sewerage System District Assessment Fund**

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**JOHN CHIANG**  
California State Controller

September 14, 2010

James M. Casso  
Attorney at Law  
Meyers | Nave  
33 South Grand Avenue, Suite 1670  
Los Angeles, CA 90071

Re: City of Bell Standby Charges/Assessments

Dear Mr. Casso:

Thank you for your letter dated September 9, 2010 (Attachment A), in which you responded to our letters of August 27, 2010 (Attachment B) and September 2, 2010 (Attachment C). In your letter, you expressed some disagreement with our conclusion that the City of Bell owed its residents a refund because it had increased a standby charge without following California's constitutional requirements.

Your letter states that the Bell City Council authorized the annual levy of standby charges on May 21, 2007. Your letter further states:

The Council effectuated the 2007 authorization of the levy of the annual standby charges by the adoption of Resolution No. 2007-27 (Attachment 3). The standby charge rates authorized to be levied in 2007, as calculated in the Engineer's Report attached to the resolution, were as follows, which are the same amounts levied in 1992. . . .

We agree with this statement.

In your response you also indicated that in Resolution No. 2007-31, the city recites having provided 45 days notice of a public hearing on the proposed adoption of a fee for sewer service, and included a copy of the notice as Attachment 5 to your letter. In reviewing the notice, we note that it states:

If adopted, the proposed rate adjustments will become effective on July 1, 2007. The basis and reasons for the proposed sewer rate adjustments are to enable the City to recover increasing operating expenses, as well as fund additional capital needs required to operate the sewer system in a financially prudent manner. The bases for the rate adjustments are more particularly analyzed in that certain sewer cost report prepared by the City ("City Report"). The Cost Report is on file at the Office of the City Clerk located at 6330 Pine Ave., Bell, California 90201 and may be reviewed there by any interested person.

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874  
SACRAMENTO 3301 C Street, Suite 725, Sacramento, CA 95816 (916) 324-8907  
LOS ANGELES 600 Corporate Pointe, Suite 1000, Culver City, CA 90230 (310) 342-5656

Two things are apparent in that paragraph of the notice. The first is that the paragraph refers to "sewer rate adjustments." As an adjustment, the notice necessarily implies that the rates have been previously levied and are in effect. In what appears to be a direct contradiction of the plain language of the notice, you expressed the view that this is a "new" sewer fee. However, the only previously levied charge, as you have acknowledged in your letter, was a standby charge. Consequently, since a tax or assessment that does not yet exist cannot be adjusted, we do not concur with your conclusion.

The second thing of importance is that the notice attached refers to a "cost report" in the Office of the City Clerk. When we inquired about this cost report, the City Clerk indicated that she was not aware of any cost report. Later, however, she provided a folder that had the Resolution No. 2007-31 and a copy of the engineer's cost report which consisted of a single page. The document provided is noteworthy for two reasons: (1) the costs indicated therein are the same as the costs used for the approval of the standby charge in Resolution No. 2007-27, and (2) the cost report is signed and dated on June 25, 2007, the day of the public hearing. It is somewhat difficult to conclude that this cost report is the one referenced in the notice of the public hearing or, for that matter, the staff report referred to in your letter simply because it was not available for 45 days prior to the public hearing. On the other hand, the only other cost report that was available is the one that supports the standby charge.

Moreover, you have also indicated that it was unfortunate that the authors of Resolution No. 2007-31 and its accompanying staff report referred to the contemplated action as "upwardly adjusting its sewer service rates," thus implying that it was increasing the standby charges. If the public notice, as you stated, implied that the city was increasing the standby charges, then perhaps the validity of the public hearing could or should be called into question and the validity of the "sewer service fee" challenged as being invalid. While we recognize that your opinion is qualified in many respects and based upon the information made available to you, it appears that your characterization of the events are not supported by the documents we reviewed or, for that matter, the documents you attached to your letter.

In your letter you maintain that the city has only collected the sewer service fee (your description of the standby charge) since 2007, although it has continued to be labeled as a "Sewer Maintenance Assessment" on property tax bills. You further state that the city retains authority to levy the standby charge but has not done so since 2007. Instead the city has opted to require payment of the fee for sewer service.

A careful review of Bell City Council Resolution Nos. 2008-18, 2009-20, and 2010-27 would seem to contradict that assertion. The engineer's reports accompanying the resolutions are labeled as "Engineer's Report for the Sewer Maintenance District Standby and Availability Charges in the City of Bell" followed by the fiscal year. Furthermore, Section 3 of the engineer's report, "Necessity for the Charges," states, ". . . it finds necessary to levy a charge for standby and availability on all properties that are or will be receiving these services to offset the costs incurred in the maintenance of the sewer system to assure the safe operation of the sewer facilities." This begs the question that, to the extent this is a new sewer service charge, why are properties that are currently not receiving the service being charged? As clearly stated, the charge is ". . . on all properties that are or will be receiving these services" (emphasis added). This appears to be a classic definition of a standby charge.

A closer review of Resolution No. 2010-27, reveals the following:

- Section 3 provides, "That the City Council hereby confirms, approves, and adopts the description of property subject to levy, estimate of costs and assessments as submitted and orders the annual levy of the assessment for the fiscal year and in the amounts set forth in the Engineer's Report and as referred to in the Resolution of Intention as previously adopted relating to said annual report."
- Section 4 states, "That the adoption of this Resolution constitutes the levy of the assessment for the fiscal year to cover the costs of administration and servicing of properties within the District."
- Section 6 states, in relevant part, "The County Auditor shall enter on the County Assessment Roll the amount of the Assessment and said Assessment shall be collected at the same time and in the same manner as County taxes are collected."
- Section 7 states, "That the City Clerk shall transmit or cause to be transmitted to the County Auditor of the County of Los Angeles, before August 10, 2010 a certified copy of the diagram and assessment roll, together with a certified copy of this Resolution."

The wording in these sections shows that the assessment is being levied pursuant to the information in the engineer's report which clearly identified the charge as a standby and availability charge. There is no mention of a sewer service charge or similar term.

From our perspective, it appears as though the re-characterization of the standby charges as a new assessment is more for the sake of convenience in order to circumvent voter approval of such charges and your position is not supported by the documentation.

While we will include your response in our final report, we are unable to concur with the conclusion reached in your letter inasmuch as you have not presented any new or additional information or explanations sufficient to warrant amending our findings. Accordingly, our position and recommendation in the letter dated September 2, 2010, remains unchanged.

If you have any questions, please contact me at (916) 324-1696.

Sincerely



JEFFREY V. BROWNFIELD  
Chief, Division of Audits

JVB/wm

8858

Attachments:

- Attachment A—James M. Casso Letter of September 9, 2010
- Attachment B—Jeffrey V. Brownfield Letter of August 27, 2010
- Attachment C—Controller John Chiang Letter of September 2, 2010

cc: Oscar Hernandez, Mayor of the City of Bell  
Teresa Jacobo, Vice Mayor of the City of Bell  
Luis Artiga, Councilman, Bell City Council  
George Mirabal, Councilman, Bell City Council  
Lorenzo S. Velez, Councilman, Bell City Council  
Pedro Carillo, Interim City Administrator, City of Bell  
Wendy L. Watanabe, Los Angeles County Auditor-Controller

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tel 213.626.2906  
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www.meyersnave.com

James M. Casso  
Attorney at Law  
jcasso@meyersnave.com

September 9, 2010

Jeffrey V. Brownfield, Chief  
Division of Audits, California State Controller  
P.O. Box 942850  
Sacramento, CA 94250-5874

**Re: City of Bell Sewer Service Fees and Standby Charges/Assessments**

Dear Mr. Brownfield:

I am writing in response to your letters dated August 27 and September 2, 2010, in which you conclude that the City of Bell has, since 2007, been levying a standby charge for sewer service and maintenance without complying with the requirements of article XIIIID of the California Constitution ("Proposition 218"). After reviewing the available documentation, and as explained below, I disagree with your conclusion. Thus, absent new and contradictory documentation not available to me at this time, I do not believe that any refund to owners of property within the City is required.

**Background of the City's Standby Charge/Assessment and Sewer Service Fees**

As noted in your letters, the City first adopted a standby charge to fund the operation and maintenance of its sewer system in 1989, with the adoption of Resolution No. 89-28 ([Attachment 1](#)). The rates approved at that time, as calculated in the Engineer's Report attached to the resolution were as follows:

<u>Type of Property</u>	<u>Annual Rate (per parcel)</u>
Residential Unit	\$7.47
Commercial	\$44.82
Commercial – High Use	\$74.70

The City last increased the rate of the standby charge in 1992, with the adoption of Resolution No. 92-33 ([Attachment 2](#)). Based on the information currently available, there does not appear to have been any procedural irregularity in the manner in which the Council approved the rates at that time. The rates approved at that time, as calculated in the Engineer's Report attached to the resolution were as follows:

<u>Type of Property</u>	<u>Annual Rate (per parcel)</u>
Residential: 5 or fewer units	\$12.70



Attachment A to Jeffrey V. Brownfield's September 14, 2010 Letter  
(continued)

Jeffrey V. Brownfield, Chief  
Division of Audits, California State Controller  
September 9, 2010  
Page 2

Residential: 6 or more units	\$16.32
Commercial	\$57.92
Commercial: High sewer usage	\$96.58

The City Council authorized the annual levy of the standby charges on May 21, 2007. The Council did not take that action in Resolution No. 2007-31 ([Attachment 4](#)), however, as referred to in your letters. Resolution No. 2007-31, adopted on June 25, 2007, did not increase the standby charges; instead, it approved sewer service fees, which are legally distinct from standby charges. They are property-related fees governed by article XIID, section 6. The Council effectuated the 2007 authorization of the levy of the annual standby charges by the adoption of Resolution No. 2007-27 ([Attachment 3](#)). The standby charge rates authorized to be levied in 2007, as calculated in the Engineer's Report attached to the resolution, were as follows, which are the same amounts levied in 1992:

<u>Type of Property</u>	<u>Annual Rate (per parcel)</u>
Residential: 5 or fewer units	\$12.70
Residential: 6 or more units	\$16.32
Commercial	\$57.92
Commercial: High sewer usage	\$96.58

As recited in Resolution No. 2007-31, the City provided 45 days notice of a public hearing on the proposed adoption of a fee for sewer service. (A copy of the notice is attached as [Attachment 5](#).) At the conclusion of the hearing, a majority protest against the proposed increase had not been received. The City Council then adopted the resolution setting the fees. The sewer service fee amounts approved by Resolution No. 2007-31, attached as Exhibit A to the resolution and based on the Sewer Cost Report ([Attachment 6](#)), were as follows:<sup>1</sup>

<u>Type of Property</u>	<u>Monthly Rate (annual)</u>
Residential – 5 or fewer units	\$2.68 (\$32.16)
Residential – 6 or more units	\$3.45 (\$41.40)
Commercial	\$12.26 (\$147.12)
Commercial High use	\$20.44 (\$245.28)

Unfortunately, the authors of Resolution No. 2007-31 and its accompanying staff report referred to the contemplated action as "upwardly adjusting its sewer service rates," implying that it was increasing the standby charges. As discussed in more detail below, despite that phrasing, it appears that the City Council did not approve an increase of the existing standby charges; rather, it approved a new fee for sewer service, and the City followed all of the

<sup>1</sup> Note that Section 2 of Resolution No. 2007-31 authorizes an automatic annual adjustment of the sewer service fees by CPI or 3%, which ever is greater.



Jeffrey V. Brownfield, Chief  
Division of Audits, California State Controller  
September 9, 2010  
Page 3

requirements of Proposition 218 in doing so. The City has only collected the sewer service fee since 2007, although it has continued to be labeled "Sewer Maintenance Assessment" on property owners' tax bills. The City retains authority to levy the standby charges, but it has elected not to do so since 2007, opting instead to require payment of the fee for sewer service. The City will communicate with the Los Angeles County Auditor-Controller's Office about changing the description of the fee on the tax bill.

#### **Compliance with Proposition 218**

Based upon my review of the factual background and applicable law, I do not believe that a new assessment ballot proceeding was required for the authorization to levy the standby charges in 2007, and the sewer service fees were adopted in compliance with the requirements of Proposition 218.

As your letters pointed out, article XIIIID, section 6(b)(4) states that standby charges "shall be classified as assessments and shall not be imposed without compliance with Section 4," which describes the assessment ballot proceeding required to obtain property owner approval for assessments. That alone is not determinative, however, of whether the City's standby charges required an assessment ballot proceeding to obtain authorization for the City to levy them. Section 5 of article XIIIID provides a list of existing assessments that are exempt from the procedural approval requirements of section 4, including "[a]ny assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for . . . sewers . . . ." Thus, an assessment or standby charge for sewer operation and maintenance that existed prior to the effective date of Proposition 218 is exempt from the procedural requirements of section 4, as long as the agency levying the assessment or standby charge does not increase the amount of the assessment or charge above the amount authorized pre-Proposition 218. See *Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal.App.4th 679, 682, 86 Cal.Rptr.2d 592; *Galbiso v. Orosi Pub. Util. Dist.* (2010) 182 Cal.App.4th 652, 107 Cal.Rptr.3d 36; *Keller v. Chowchilla Water Dist.* (2000) 80 Cal.App.4th 1006, 1012, 96 Cal.Rptr.2d 246, 251.

All of the engineer's reports supporting the standby charges since 1989 have stated that the purpose of the City's standby charges is to fund the operation and maintenance of the City's sewer system. As noted above, the amount of the City's standby charge has not increased since 1992, and the City Council did not increase it in 2007, as your letter purports. The 2007 Engineer's Report clearly states, for example, that the percentage change in the amount of the standby charges for each property type was 0. Since the standby charges preexisted Proposition 218 and have not been increased since 1992 (including not being increased in 2007), under article XIIIID, section 5(a), they are exempt from the procedural requirements of article XIIIID, section 4. In other words, the City was not required in 2007 to obtain property-owner authorization for the standby charges, and thus, no refund is required.



Jeffrey V. Brownfield, Chief  
Division of Audits, California State Controller  
September 9, 2010  
Page 4

Similarly, no refund is required of the sewer service fees approved in 2007, because the City followed the requirements of article XIID, section 6 for property-related fees. A property-related fee (in this case for sewer services) is legally distinct from a standby charge or assessment. Levying one does not preclude levying the other, and although some properties may pay both, others—such as vacant and undeveloped properties that do not use sewer services—would only be subject to the standby charge.

The procedural requirements of article XIID, section 4 are that the City provide 45 days notice of a public hearing at which the Council will consider approval of proposed fees. Property owners potentially subject to the fees may submit written protests against the fees. If a majority of property owners submit written protests, then a majority protest exists, and the Council may not approve the fees. If a majority protest does not exist, then the Council may approve the proposed fees.

In 2007, the City proposed increasing the existing sewer service fees as set out in Exhibit A to Resolution No. 2007-31. Based on the information presently available to me, it appears that the notice included as Attachment 5 was mailed to property owners more than 45 days before the public hearing on June 25. At the conclusion of the hearing, a majority protest did not exist, so the Council adopted Resolution No. 2007-31, approving the proposed sewer service fees. No assessment balloting proceeding or other property owner approval was required to satisfy Proposition 218.

Subsequent to the approval of the sewer service fees, the City elected to levy only the fees and not the standby charges. As you can see in Attachment 7, the City transmitted to the County Auditor-Controller Resolution No. 2007-31, instructing requesting that the Auditor-Controller include the fees on property tax bill. The transmittal contains a reference to the "Sanitation and Sewerage Systems Assessment District FY 2007-08" and uses the same account number as the City had previously used for the standby charges. To the extent that that may constitute error, it is merely administrative and does not go to the City's underlying authority to charge the sewer service fees. As noted above, the City will work with the County Auditor-Controller to correct the terminology on the tax bill.

By way of additional explanation of this issue, you may note that the Engineer's Report for the 2007 standby charges calculated the reasonable estimated cost of providing sewer services as \$347,652. It also stated that the revenue expected from the standby charges (or assessments) would be approximately \$136,982. It thus concluded that there would be a \$210,652 shortfall that would have to be made up from general funds. According to City Engineer Carlos Alvarado, the purpose of the sewer service fees was to help fill that gap so that the City's General Fund would not have to continue to subsidize sewer maintenance and operation to the same extent. The revenue expected to be generated by the sewer service fees was approximately equal to the estimated cost of providing the services, and the County Auditor-Controller's summary of the revenue generated by the fees is similar to the amounts



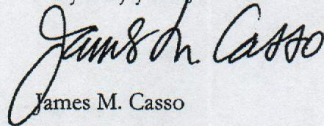
Jeffrey V. Brownfield, Chief  
Division of Audits, California State Controller  
September 9, 2010  
Page 5

that the City anticipated receiving, taking into account the inflationary adjustments to the fees approved in Resolution No. 2007-31.

In sum, it appears to me, based on the information presently available, that in 2007, the City Council authorized two different ways to pay for sewer services—standby charges and property-related sewer service fee. With regard to both, it appears preliminarily that the City complied with the requirements of Proposition 218, to the extent that they applied to the City's action; as explained above, the standby charges are exempt. After approving both, the City elected to collect only sewer service fees. We do agree that confusing wording was used in the resolution approving the fees and in transmitting the City's request to the County Auditor-Controller to collect the fees. Despite that poor word choice, it appears that the City followed all procedural requirements for the approval of the sewer services fees, and that is the only sewer service levy that the City has collected since 2007. Thus, no refunds to property owners are required, as suggested in your letter. Indeed, a refund would actually result in an additional General Fund subsidy to those who use or have available to them sewer services, requiring those who do not use sewer services to pay for service to those who do and depriving others in the City of the services that could be funded by the moneys in the General Fund.

If you continue to be interested in this issue, the City will do everything in its power to assist you in investigating the background of the sewer service fees and standby charges, their nature, the manner of their calculation, their compliance with state law, and any other matter in which you might be interested. Please contact me or my partner, Sky Woodruff, if you have any questions about this letter.

Very truly yours,



James M. Casso

Attachments: Attachment 1—Resolution No. 89-23  
Attachment 2—Resolution No. 92-33  
Attachment 3—Resolution No. 2007-27  
Attachment 4—Resolution No. 2007-31  
Attachment 5—Notice of Sewer Service Fee and Public Hearing (2007)  
Attachment 6—Sewer Cost Report (2007)  
Attachment 7—Transmittal to County Auditor-Controller for 2007-08

cc: City Council  
Los Angeles County Office of the Auditor-Controller





**JOHN CHIANG**  
California State Controller

August 27, 2010

Pedro Carrillo  
Interim City Administrator  
City of Bell  
6330 Pine Avenue  
Bell, California 90201

Dear Mr. Carrillo:

My auditors have completed a review of direct assessments currently imposed on the property owners in the City of Bell. Previously, the auditors identified an unallowable assessment related to the city's pension obligations. In reviewing other direct assessments, the auditors have determined that the increased assessment imposed starting with fiscal year (FY) 2007-08 to current related to the Sanitation and Sewerage System District may also be unallowable.

The first time the City of Bell levied an assessment for the Sanitation and Sewerage System District was in 1989 (Resolution No. 89-28). The resolution specifically used the term "stand-by charge" in describing the purpose of the assessment. When the assessment was increased during FY 2007-08 (Resolution No. 2007-31), the resolution title referred to the increase as an upwardly adjusting rate while the body of the resolution referred to the engineering report with a title of "Sewer Standby and Availability Charges."

The California Constitution, Article XIII D, section 6, subsection (b)(4), requires that sewer "standby" charges, whether characterized as charges or assessments, be classified as assessments and shall not be imposed without complying with the California Constitution, Article XIII D, section 4, which requires a vote of the property owners who would be affected by the assessment. City staff could not provide us with evidence that such a vote took place or that these are not standby charges. The estimated amount of the charges related to the increase is \$621,737 (see attached).

We request that you review this matter and provide us with documentation to support why this assessment should not be considered a standby charge. Please provide this information to us by the close of business, September 2, 2010.

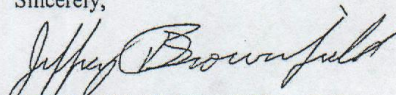
MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874  
SACRAMENTO 300 Capitol Mall, Suite 518, Sacramento, CA 95814 (916) 324-8907  
LOS ANGELES 600 Corporate Pointe, Suite 1000, Culver City, CA 90230 (310) 342-5656



Pedro Carrillo  
August 27, 2010  
Page 2

If you have any questions please contact me at (916) 324-1696.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeffrey V. Brownfield", written in a cursive style.

JEFFREY V. BROWNFIELD, Chief  
Division of Audits  
California State Controller

JVB/sk

8821

Attachment

cc: Oscar Hernandez, Mayor, City of Bell



**CITY OF BELL**  
**SANITATION AND SEWERAGE SYSTEM DISTRICT ASSESSMENTS**  
**For Fiscal Years 2007-08 Through 2009-10**

<u>Fiscal Year</u>	<u>Allowable Assessments</u>	<u>Actual Assessments</u>	<u>Excess Assessments</u>
2009-10	\$ 136,151	\$ 349,606	\$ (213,455)
2008-09	\$ 136,151	\$ 339,081	\$ (202,930)
2007-08	\$ 136,151	\$ 341,503	\$ (205,352)

**Total Excess Assessment**      \$ (621,737)

<u>Fiscal Year</u>	<u>Allowable Assessment Rate</u>	<u>Actual Assessment Rate</u>	<u>Excess Assessment Rate For a Single Family Residence (Dwelling)</u>
2009-10	\$ 12.70	\$ 33.12	\$ (20.42)
2008-09	\$ 12.70	\$ 32.16	\$ (19.46)
2007-08	\$ 12.70	\$ 32.26	\$ (19.56)

*Source: LA County Auditor Controller  
City of Bell Resolutions and Engineer Reports*





JOHN CHIANG  
California State Controller

September 2, 2010

Pedro Carrillo  
Interim City Administrator  
City of Bell  
6330 Pine Avenue  
Bell, California 90201

Dear Mr. Carrillo:

My auditors have completed a review of direct assessments currently imposed on the property owners in the City of Bell. Previously, the auditors identified an unallowable assessment related to the city's pension obligations that resulted in Bell property owners paying an estimated \$3 million in excessive taxes. In reviewing other direct assessments, the auditors have determined that the increased assessment imposed during Fiscal Year (FY) 2007-08 to present pertaining to the Sanitation and Sewerage System District is unallowable.

The City of Bell first levied an assessment for the Sanitation and Sewerage System District in 1989 pursuant to Resolution No. 89-28. The resolution referenced the assessment as a "standby charge." Subsequently, when the assessment was increased during FY 2007-08, Resolution No. 2007-31 referred to the increase in the resolution heading as an upward rate adjustment. The body of that resolution referred to the engineering report, which was titled "Sewer Standby and Availability Charges."

The California Constitution, Article XIII D, section 6, subsection (b)(4), requires that sewer "standby" charges, whether characterized as charges or assessments, be classified as assessments and shall not be imposed without complying with the California Constitution, Article XIII D, section 4, which requires a vote of the property owners who would be affected by the assessment. City staff could not provide us with evidence that such a vote took place and therefore, we have concluded that the increased assessment was not allowable. The estimated amount of the charges related to the increase for FYs 2007-08 through 2009-10 is \$621,737 (see attached).

On two separate occasions – once on September 1, 2010, and again this morning – you communicated to Jeffery V. Brownfield, Chief of my Audits Division, that, after having the opportunity to review this matter since last Friday, you were in full agreement with our finding. However, during a subsequent conversation with Mr. Brownfield, you suggested that the property tax levy in question may not have required a vote of property owners and have requested more time to conduct additional research into the matter.





Pedro Carrillo  
September 2, 2010  
Page 2

The County of Los Angeles Auditor-Controller's Office has informed us that any changes to FY 2010-11 property tax bills must be received no later than noon on September 10, 2010. I urge you to quickly complete your review so that, if the increased levy was indeed an unallowable assessment, the City of Bell will have sufficient time to reduce the assessment for FY 2010-11. If necessary, this action should provide the Auditor-Controller with a new transmittal/summary, new CD (with the corrected file), and new City Council Resolution.

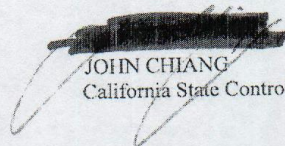
The Constitution does not contain a provision governing over-assessments for prior fiscal years. Therefore, if you conclude that there has been an over-assessment, the City can either refund the over-assessed amounts or to offset future assessments. Please notify us of the city's planned action regarding this matter.

Should you conclude that there was no over-assessment, please send to my office all documentation and empirical evidence upon which your conclusion is based. As you know, all documentation furnished, to date, by your office in response to our audit into this matter explicitly refer to the levy as a "standby charge," which requires a vote of the property owners.

We are planning to issue a final report of all findings related to our audit of the City of Bell, including this matter, later this month. Based upon the information provided by your research into this matter, we will include a final finding and recommendation.

If you have any questions please contact Jeffrey V. Brownfield, Chief, Division of Audits at (916) 324-1696.

Sincerely,

  
JOHN CHIANG  
California State Controller

Attachment

cc: Oscar Hernandez, Mayor, City of Bell  
Wendy Watanabe, Auditor-Controller, Los Angeles County  
Robert Quon, Assessor, Los Angeles County  
Mark Saladino, Treasurer, Los Angeles County  
Arlene Barrera, Division Chief, Property Tax Division, Los Angeles County



**CITY OF BELL  
SANITATION AND SEWERAGE SYSTEM DISTRICT ASSESSMENTS  
For Fiscal Years 2007-08 Through 2009-10**

<u>Fiscal Year</u>	<u>Allowable Assessments</u>	<u>Actual Assessments</u>	<u>Excess Assessments</u>
2009-10	\$ 136,151	\$ 349,606	\$ (213,455)
2008-09	\$ 136,151	\$ 339,081	\$ (202,930)
2007-08	\$ 136,151	\$ 341,503	\$ (205,352)
<b>Total Excess Assessment</b>			<u><u>\$ (621,737)</u></u>

<u>Fiscal Year</u>	<u>Allowable Assessment Rate</u>	<u>Actual Assessment Rate</u>	<u>Excess Assessment Rate For a Single Family Residence (Dwelling)</u>
2009-10	\$ 12.70	\$ 33.12	\$ (20.42)
2008-09	\$ 12.70	\$ 32.16	\$ (19.46)
2007-08	\$ 12.70	\$ 32.26	\$ (19.56)

**Source: LA County Auditor Controller  
City of Bell Resolutions and Engineer Reports**

**Attachment C—  
Controller Chiang's Letter to Pedro Carrillo  
Dated September 15, 2010  
Regarding Business License Taxes**

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**JOHN CHIANG**  
**California State Controller**

September 16, 2010

Pedro Carrillo  
Interim City Administrator  
City of Bell  
6330 Pine Avenue  
Bell, CA 90201

Dear Mr. Carrillo:

My auditors have completed a review of the business license taxes, which also includes rental business license taxes for the 2000 through 2010 calendar years. Our review noted that the city increased the amount for business licenses taxes in excess of 50% for more than 1,000 business owners in the city since the 2000 calendar year. The increases were made without voter approval as required under Article XIII C to the California Constitution which specifies, "No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote."

Additionally, the Bell Municipal Code clearly states that business license taxes are taxes for revenue generating purposes. Bell Municipal Code section 5.04.020 states:

The purpose of the provisions of this division is to prescribe a schedule of business license taxes, for revenue purposes only, for all businesses located within the city, in the amounts and manner as set forth hereinafter.

Monies collected from business license taxes are deposited in the city's General Fund and are available at the discretion of the city's management, subject to the approval of the city council, to fund any operation or activity within the city government. Therefore, we believe the increases were general tax increases and subject to voter approval.

It is not possible to quantify the specific amount of additional business license taxes collected as a result of the increase imposed without voter approval because more than 1,000 businesses are involved with varying tax rates. However, based on annual collection figures, we estimate the total to be over \$2.1 million for calendar years 2000 through 2010 (see attached).

Pedro Carrillo  
September 16, 2010  
Page 2

We request that you review this matter and take appropriate action to refund the excess business license taxes collected. Please provide us with your plan of action by the close of business, September 20, 2010.

If you have any questions, please contact Jeffrey V. Brownfield, Chief, Division of Audits, at (916) 324-1696.

Sincerely,

*Original signed by*

JOHN CHIANG  
California State Controller

Attachment

cc: Oscar Hernandez, Mayor of the City of Bell  
Jeffrey V. Brownfield, Chief  
Division of Audits, State Controller's Office

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CITY OF BELL  
SCHEDULE OF UNALLOWABLE BUSINESS LICENSE TAXES COLLECTED BY CALENDAR YEAR  
CALENDAR YEARS 2000 THROUGH 2010

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	Calendar Year											
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Actual Business License Taxes Collected*	\$ 737,368	\$ 544,472	\$ 531,021	\$ 553,274	\$ 456,570	\$ 549,411	\$ 583,020	\$ 654,857	\$ 1,102,131	\$ 741,597	\$ 651,509	\$ 7,105,230
Allowable Taxes Collected	617,488	455,953	444,689	463,324	382,342	386,511	392,607	422,984	644,312	418,760	370,819	4,999,789
Unallowable Taxes Collected	\$ 119,880	\$ 88,519	\$ 86,332	\$ 89,950	\$ 74,228	\$ 162,900	\$ 190,413	\$ 231,873	\$ 457,819	\$ 322,837	\$ 280,690	\$ 2,105,441

Source: City of Bell Financial Records – Fiscal Year (FY) 2003-04 through FY 2009-10  
State Controller's Office Financial Reports – FY 1991-92 through FY 2002-03

\*This Amount Includes Rental Business License Taxes.

**Attachment D—  
Copy of Administrative Agreement**

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## ADMINISTRATIVE AGREEMENT

This Administrative Agreement ("Agreement"), is made and entered into this 1<sup>st</sup> day of March, 2010, by and between the CITY OF BELL ("City") and [REDACTED] ("Employee"), [REDACTED] for the City of Bell.

NOW, THEREFORE, CITY AND EMPLOYEE agree to the following:

1. Employee shall be entitled to a cash advance, from the City, an amount not to exceed \$130,000 (One Hundred Thirty Thousand Dollars).
2. The Agreement is subject to the following provisions:
  - a) Employee assigns to City any rights under the Agreement or Federal, State or local law to collect from wages earned up to the unpaid balance plus accrued interest;
  - b) Repayment of the cash advance shall bear interest that shall compound biweekly and accrue at a rate equal to the annual interest rate of the Local Agency Investment Fund (LAIF) administered by the California State Treasurer for the quarter prior to the disbursement of the cash advance. The interest rate to be used after disbursement of the advance shall be the LAIF interest rate prior to the quarter of the payment date;
  - c) The term of the advance shall commence on the date of disbursement of the cash advance and shall continue until the date the repayment is fully satisfied by payment as provided herein;
  - d) Payment of the loan and the accumulated interest should be paid in full to the City **no later than May 28, 2010**;
  - e) In the event of Employee's termination, repayment of the advance outstanding shall immediately become due and payable;
  - f) In the event of Employee's termination, if repayment of the advance is not fully satisfied by the employee's the wages earned; employee should obtain a conventional loan to meet the aforementioned obligation to the City;
- 2) City and Employee hereby acknowledge and agree that this Agreement is in full force and effect. All capitalized terms not specifically defined herein, shall have the same meaning ascribed to them in the Agreement.

IN WITNESS WHEREOF, the parties have caused this Administrative Agreement to be executed as follows:

"City"  
CITY OF BELL, CALIFORNIA

By:   
Robert A. Pozzo, Chief Administrative Officer

"Employee"



**Attachment E—  
City's Response to Draft Audit Report**

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City of Bell

September 20, 2010

Jeffrey V. Brownfield, Chief  
Division of Audits  
California State Controller  
Post Office Box 942850  
Sacramento, CA 94250-5874

**Re: Administrative and Internal Accounting Controls Audit/CA (SCO)**

Dear Mr. Brownfield:

This letter is in response to the California State Controller's Audit Report concerning the City of Bell's ("the City") Administrative and Internal Accounting Controls ("Audit Report"), and correspondence from your office on September 14 and September 15, 2010, concerning the City's standby charges for sewer services, and the City's business license tax.

**Audit Report Findings 1, 2 and 3:**

The City appreciates the Controller's review of the issues identified in the Audit Report, and looks forward to continue working with your office to ascertain the scope of these issues and to address them as necessary.

**Finding 3: Sewer Service Fees:**

The City appreciates the Controller's additional review of the City's fees for sewer service and sewer standby charges. In light of your September 14, 2010 letter, we are continuing to investigate one aspect of the matter, which is addressed in more detail below. The City continues to disagree with your overall conclusion that it improperly increased the standby charges in 2007, and that a refund of \$621,737.00 is warranted. Some refund may be appropriate to owners of property without sewer connections, and the City will make such refunds, based on the conclusion of its investigation of this matter.

Your September 14, 2010 letter identifies portions of the wording of the notice for the adoption of the sewer service fees adopted by Resolution No. 2007-31. First, the notice refers to "sewer rate adjustments," and your letter reasonably notes that an "adjustment" could only be made to an already existing rate. To clarify the City's response its September 9, 2010 letter, it does appear that the authors of the notice and Resolution No. 2007-31



made errors in drafting the documents and may have misunderstood the difference between standby charges and service fees. Moreover, those errors do create ambiguities that raise valid questions about the validity of sewer service fees. The issue, the City believes, is the lawfulness of the adoption of the service fees, which depends on whether the notice and the process of adopting the fees met the requirements of Article XIIIID, Section 6 of the California Constitution. The City's opinion is that it substantially complied with those requirements.

The substantive requirements for a notice of a city's intent to adopt a new or increased service fee are contained in Article XIIIID, Section 6(a) (1). The notice of the adoption of the City's sewer service fees contains all of that information. It mistakenly refers to the adoption of the fee as an "adjustment" rather than as the adoption of a new fee. The City does not know the reason for the mistake, and any assertion about the reason would be speculation. That mistake did not, however, deprive potential ratepayers of the information required by Section 6(a) (1). The notice informed them of the amount of the proposed fee, its purpose, and the basis upon which it was calculated, along with the date, time, and location of the hearing. Thus, the notice met the legal requirements and did not mislead potential ratepayers about any relevant aspect of the proposed fees. Whether it was a new fee or an increase of an existing fee was not legally relevant, and the identified misstatement did not, in the City's opinion, alter the lawfulness of the process that the City followed in adopting the fees.

Your September 14, 2010 letter questions whether the cost report required by Section 6 was available to the public for 45 days before the hearing and notes that its calculation of costs is the same as the calculation in the Engineer's Report for the standby charges. Regarding the first point, the only evidence that your letter cites is that it is dated the same day as the public hearing on the service fees. On its own, the City finds that fact ambiguous. Your letter does not recognize that the amounts of the fees proposed in the notice are the same as the amounts in the cost report. It seems highly unlikely to the City that the City Engineer would have calculated the fees for the purpose of the notice but not have completed the cost report and made it available to the public. Moreover, as noted in our September 9, 2010 letter, Resolution No. 2007-31 specifically recites that the report was available for the required 45-day period.

The City does not believe that it is problematic that the cost report of the sewer service fees has an identical calculation of costs to the Engineer's Report for the standby charges. Since both were intended to calculate the cost of sewer service, one would expect them to be similar. There are significant differences between the two, however. The 2007 Engineer's Report leaves the standby charges at their historical levels, whereas the cost report proposes to set service fees at a higher amount. The City does recognize the confusion resulting from the documents for the service fees incorrectly referring to the fees as an "increase," but it continues to believe that that wording alone does not undermine the lawfulness of the fees themselves, since it appears to have conformed to the required process for their adoption. It

is more problematic that, in subsequent years, the annual authorization of the standby charges set those at the same rates as the sewer services fees, which are addressed below.

Your letter next questions (1) why, if the City adopted a sewer service fee in 2007, it also adopted resolutions in 2008, 2009, and 2010 authorizing and directing the levy of the standby charges; and (2) why, if the City did impose a new sewer service fee in 2007, property owners without sewer hookups are being charged, since the resolutions authorizing the levy of the standby charges state that the charge is charged against properties using the service and those for which the service is available. Two things should be kept in mind when considering those points. First, there is no reason that a city cannot maintain both a fee for sewer service and a standby charge, as long as property owners are not required to pay twice for the same things and all other legal requirements are met. Indeed, there would be nothing unusual about charging a service fee for owners of property with sewer hookups and a standby charge for those without a hookup but who benefit from the availability of the service. Second, as you know, to maintain the authority to levy standby charges, the City Council must authorize it annually; there are no similar requirements for sewer service fees.

It appears to the City that your September 14, 2010 letter takes the position that the City must be either levying sewer service fees or standby charges, and does not seem to recognize the possibility that the City is levying both. The City's September 9, 2010 letter, based on the information available then, concluded that the City had substituted the sewer service fees for the standby charges. After considering the points made in your September 14, 2010 letter, it may be the case that the City is levying both.

If the City has been levying both sewer service fees and standby charges since 2007, then the only problem that it sees is that it may have been levying the same amounts for the standby charges as for the service fees. As your September 14, 2010 letter points out, the amounts of the standby charges approved for 2008-09, 2009-10, and 2010-11 are the same as the service fees. At the time of writing our September 9, 2010 letter, we spoke with the City Engineer about whether the sewer service fees were being charged to all properties in the City or only those receiving sewer services. We understood at that time that it was only being charged to properties receiving service, but we are now investigating the matter further. If the City concludes that properties without sewer hookups have been charged standby charges in the same amount as the sewer service fees, then the staff will recommend to the Council that appropriate corrective action is taken to refund those property owners for the difference between the allowable standby charge amounts and the service fees amounts. The staff will also prepare documents for the service fees and the standby charges in the future to clarify that the City is levying the fees on properties using sewer services and standby charges on properties without sewer hookups.

The City genuinely appreciates the work of the Controller's Office in auditing the City's finances. In light of the allegations of the previous administrations actions, it has been a great benefit to the City and its residents to have an outside agency review the City's

revenues and expenditures. The City specifically thanks the Controller for identifying this issue so that it can further investigate whether some property owners are due refunds. As explained above, although the adoption of the sewer service fees was incorrectly described as an increase of an existing fee—and it may be that the engineers who prepared the documents did not sufficiently understand the difference between standby charges and service fees—the process for adopting it appears to have conformed to the requirements of Article XIIIID, section 6. Nevertheless, the City does believe that there are additional questions about the standby charges and service fees that must be answered, and it will continue to investigate. If it finds that property owners were charged a fee or standby charge in excess of what was lawfully permitted, it will take steps to provide refunds or future credits to the affected property owners. The City's opinions in this response are based on the documents presently available; its ultimate conclusions and the actions that it proposes to take in the future regarding sewer service fees and standby charges depend in part on the outcome of its ongoing investigation.

**Finding 3: Business License Tax:**

Your September 15, 2010 letter regarding business license taxes states that, since 2000, the City has increased those taxes without voter approval, in violation of Article XIIIIC, Section 2(b) of the California Constitution (Proposition 218). The City disagrees that the increases violated Article XIIIIC, Section 2(b); however, the City is concerned that the increases may have violated Government Code Section 53723, which is a portion of Proposition 62. The City is investigating whether the increases were in violation of that section, and if so, what the appropriate remedy is.

As the Controller's Office must have seen during its investigation of business license taxes, the current version of the tax was enacted and codified as Chapter 5.08 of the Bell Municipal Code in 1990 or 1991. (We are attempting to find the original ordinance.) Section 5.08.030 of the Code provides for the automatic annual adjustment of the tax rates by CPI, as defined in that section. The City has adjusted the tax rates annually since then, including from 2000 to the present. Under Government Code Section 53750(h)(2)(A), voter approval was not required for those inflationary adjustments, however, because that section states that a schedule of inflationary adjustments approved before the date of adoption of Proposition 218 is specifically not considered a tax "increase" that requires voter approval.

In reviewing your letter, the City became concerned that, if section 5.08.030 were newly added to the business license tax in 1990 or 1991 (i.e. the same provision for automatic inflationary adjustments did not exist in the previous version of the ordinance) and not approved by the voters, then it may violate Section 53723. As you are no doubt aware, for many years after the approval of Proposition 62, there was litigation over its constitutionality. In 1991, an appellate court held that Proposition 62 was unconstitutional. See *City of Woodlake v. Logan*, 230 Cal. App. 3d 1058 (1991). As a result of that decision, many cities approved new or increased taxes without voter approval. If the City added section



Jeffrey V. Brownfield, Chief  
Division of Audits  
California State Controller  
September 20, 2010  
Page 5

5.08.030 in 1991 without voter approval, it may have done so in reliance on that decision. Of course, the California Supreme Court ultimately upheld Proposition 62. See *Santa Clara Local Transportation Authority v. Guardino*, 11 Cal. 4th 220 (1995).

The *Guardino* case left open the question of what the appropriate remedy and the potential liability are for cities that raised taxes without voter approval while the courts were deciding Proposition 62's constitutionality. In 1997, in *McBrearty v. City of Brawley*, 59 Cal. App. 4th 1441 (1997), the appellate court held that a city must stop collecting such a tax until voters approve it, or stop collecting the tax altogether. Four years later, in *Howard Jarvis Taxpayers Association v. City of La Habra*, 25 Cal. 4th 809 (2001) the California Supreme Court held that the statute of limitations to challenge a tax adopted in violation of Proposition 62 is renewed each time a city collects it. The court added that, in the absence of another statute of limitations, the three-year period in Code of Civil Procedure Section 338(a) applies to both injunctive relief and for refunds. [Note that Bell has a claims ordinance (Municipal Code section 2.88.030(B)) that requires the presentation of claims within one year, as provided for the Government Claims Act.] Additionally, the appellate court ruled in *Ardon v. City of Los Angeles* (May 28, 2009, B201035) that class claims for a tax refund are not permitted under the Government Claims Act.

In light of the foregoing, the City is investigating whether the adoption of Section 5.08.030 of the Municipal Code violated Proposition 62. Depending on the outcome of that investigation, the City will evaluate the extent to which local business owners are entitled to refunds and the best method for making those refunds. The City thanks the Controller's Office for bringing this issue to its attention so that it can ensure that local businesses have not been taxed in excess of the legal limit or provide those businesses with refunds, in the event that the business license taxes exceed the maximum allowable rates. The City's opinions in this response are based on the documents presently available; its ultimate conclusions and the actions that it proposes to take in the future regarding sewer service fees and standby charges depend in part on the outcome of its ongoing investigation.

The City will continue its investigations of the sewer service fees and the City's business license tax. Should you have any further questions regarding these matters, please do not hesitate to contact me.

Sincerely,

Pedro Carrillo  
Interim Chief Administrative Officer

cc: The Honorable Mayor Oscar Hernandez and Councilmember's

## **Attachment F— SCO's Comments**

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### Findings 1 and 2

The city did not specifically comment on Finding 1 or Finding 2, except to state, “The City appreciates the Controller’s review of the issues identified in the Audit Report, and looks forward to continue working with your office to ascertain the scope of these issues and to address them as necessary.”

Consequently, our findings and recommendations to these findings remain unchanged.

### Finding 3—Sanitation and Sewerage Standby Charges

The city’s position is that it is levying two assessments/fees, a sewer service fee and a standby charge. However, the city’s resolutions and engineering cost reports for the Sanitation and Sewerage System District for the prior 21 years references only standby charges.

Additionally, the city states that “. . . and it may be that the engineers who prepared the documents did not sufficiently understand the difference between standby charges and service fees. . . .” A licensed engineer should know the difference between a standby charge and a sewer service fee. The city’s licensed engineer’s opinion fully supports that it is a standby charge.

Our finding remains as stated.

### Finding 3—Business License Tax

The city disagrees with our finding and denies violating Article XIII C, section 2(b) of the California Constitution. The city claims that the business license taxes increased annually by the consumer price index from 2000 to present. However, based on our review, the business license taxes did not increase annually until 2005. Therefore, this was a tax increase which required a majority vote of the residents of the City of Bell.

Our finding remains as stated.

**State Controller's Office  
Division of Audits  
Post Office Box 942850  
Sacramento, CA 94250-5874**

**<http://www.sco.ca.gov>**